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STORY OF SOLICITORS.

By E. B. V. CHRISTIAN.

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A Short History of Solicitors

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A Short

History of Solicitors

By

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PREFACE.

Englishmen have not always regarded the profession of the law as a matter for national pride. As the Oxford poet puts it—

> "A solicitor, ev'ryone knows,
> Is the butt of the man with a sneer;"

but, popular or not, solicitors may claim to be a peculiarly English institution. Law agents no doubt exist everywhere; but abroad the duties are differently distributed, and in France, *e.g.*, the *avocat*, the *avoué*, the *agent d'affaires*, and the *huissier* divide the duties here united. The notary—that important figure in Roman law, and in countries whose law is based upon the Roman system—is almost unknown in England, and, perhaps, exists at all only out of deference to the commercial habits of con-

tinental customers. His duties are discharged by the "inferior branch" of the legal profession. For good or evil, the solicitor is a home product, a true part of our national story.

In this country few professions are so old as the solicitor's and probably none is so stringently regulated or so jealously supervised by the State. From the first day of his apprenticeship to the last day of his practice every action of the solicitor is subject to regulations laid down by Parliament; his education, his right to practise, his relations to his employers, his remuneration, all are minutely prescribed by the Legislature. But his true position is not generally known. To the public the solicitor is the lawyer of first instance, and the only sort of lawyer with whom the client comes into contact. But if the opinion of the Bar be correct, the solicitor is no lawyer. The one thing widely known concerning the solicitor is, that he is "a gentleman by Act of Parliament," and this is a mistake. It is not for the present writer to deny that solicitors have borne without abuse the grand old name, defamed by every charlatan; but no one has been able to find the Act of Parliament which conferred on

them that rank or style. It is true that for very many years solicitors have been described as gentlemen in legal and official documents; that their vocation has been judicially held to be a profession and not a trade; and—precious balm for wounded, sensitive spirits—even in the time of George the Fourth they were admitted to belong to "the caste of gentility." But this distinction rests on no statutory basis. It was even suggested by Mr. Timbs that the whole thing is a misapprehension of the Statute of Westminster the Second, and that the time-honoured belief is due to the mistake of reading the words "general attorney" as "gentleman attorney."

In case any "lay gent" (to use Roger North's phrase) should attempt to read this book, it may be well to give the law's recipe for making and dishing a solicitor. The person who wishes to enter the misunderstood profession must first pass an examination in "general knowledge." He must then pay 80*l.* to the government. Having done this, he is entitled to be, and must be, apprenticed to a solicitor (who must have only one other such articled pupil) for five years, unless he has passed certain other examinations, in which case the term may be reduced

to four years, or three. His apprenticeship indentures, or "articles of clerkship," must then be registered with the proper authority. During his period of pupilage the clerk must have no other occupation (except by a judge's permission), and must pass two examinations in his legal acquirements. Having satisfied the examiners, and been labelled proficient, he must pay some 30*l.* more to the government, and is then entitled to be admitted a solicitor on taking the oath to behave as such. But before he can practise he must pay, and so long as he continues to practise he must continue to pay every year, his "certificate duty." This is, in effect, an additional fixed income-tax calculated on profits which the solicitor may not make. In return for these payments he and his fifteen thousand fellow solicitors have an exclusive right to advise in legal matters for reward, and to conduct such legal business as does not fall within the province of the Bar. But he is subject, in all his doings, to summary control by the judges; and if he does anything grossly improper, they will take away his right to carry on his business. As it has been flippantly expressed, they deprive him of his bread and butter, and call it striking him off the roll.

When the solicitor has secured a client the question of remuneration arises. A poet, fated not to reach the peak of Parnassus, said, lamenting his dull imprisonment—

> "Some sharp attorney must the captive hire,
> Who knows each secret winding of the laws,
> *Some previous fees th' attorney will require,*
> *Before he ventures to conduct his cause.*"

It is upon this question of remuneration that the law's humour finds fullest expression. The solicitor cannot, like every other man in the country, insist on being paid at once. He must deliver a long statement of what he has done, and (with one modern exception) he must, in his statement, set out the price at which he values each separate step he has taken. Having done this, he must wait a month before he can compel payment. And the solicitor cannot, as a rule, fix the price to be paid for his services. The payment he is to receive for the work he does is fixed by law; every action of his is judicially appraised. To prevent him charging too much, a special class of officials exists, who will measure his bill by the law's foot-rule and clip off any excess. And the sum so ascertained is all the solicitor

must receive. If a client disregards the law's scheme, and is sufficiently grateful to his solicitor to make him a present, the law does not enable the solicitor to retain it. When the gratitude is gone, the gift may, if the client wishes, be reclaimed by him. So determined is the law on this point, that if a solicitor's wife's aunt makes her niece a present, it must be given back on demand, should the solicitor be professionally concerned for the elder lady. But, by way of compensation, the solicitor may retain his client's documents until he is paid the pittance which the law does permit him to receive.

These regulations affecting the creation and conduct of solicitors are founded partly on rules laid down by the judges, partly on a series of statutes extending over six hundred and fifty years, partly on immemorial usage and practice of the Courts. All, or nearly all, of them have now been embodied in the statute law, but in their origin they depended on various authorities and were of very different dates.

The solicitor's duties are infinitely varied, but fall into three main divisions. The first duty is to advise his clients upon all questions of

law or business on which he may be consulted, instilling some worldly wisdom into the simple, and stimulating the lethargic consciences of the children of the world; to prepare some classes of commercial contracts; and generally to keep his clients out of trouble, so far as he can, and get them out of it as cheaply as possible when they incur the consequence of disregarding his counsels. The second division of his work is to act as legal agent for litigants; to conduct their causes in the law courts, with the important exception of speaking for them at the trial, which he cannot do. The third division is conveyancing, the preparation of the documents necessary to transfer, let, or pledge landed property. Of these three classes, the first and third were not originally the work of solicitors at all. Part, and that perhaps the least important part, of litigation, the second of these three divisions, formerly constituted the whole duty of the solicitor. Conveyancing and the modern advisory functions were anciently performed by barristers and others. It was late in our history that the solicitor first transacted business of that nature; and the enlargement of his duties, in spite of the hostility of the Legislature and general unpopularity, was only slowly and gradually achieved.

It seemed worth while to trace the history of this development, and to summarize the long series of statutes, rules of the courts, and changes in practice which have resulted in the present regulation of solicitors described above. An attempt has been made in this little book to collect some of the materials available for that long and somewhat curious story.

It was only when the greater part of the present volume had been written, that the writer became aware of a paper, read at the Special Meeting of the Incorporated Law Society in 1887, by the late Mr. Frederick E. Sawyer, F.S.A., in which he urged that a History of Solicitors should be undertaken. Mr. Sawyer proposed to divide the subject into seventeen main heads, with eighteen sub-divisions; so formidable a classification might have modified the surprise which the essayist felt that his profession had not already found its historian. Some of the themes Mr. Sawyer suggested, such as the distinctions attained by solicitors "in the paths of poetry, art, science, literature, or archæology," did not seem necessarily to fall within the limits of a history of the class; and the task of compiling a list of attorneys and solicitors from the earliest time

has not been attempted here. Nor, while it is hoped that the main outlines of the professional story have been sketched, has any effort been made to compile "a collection of satires, poems, and caricatures relating to the profession," such as Mr. Sawyer suggested.

The poets, indeed, cannot be counted among the reliable authorities on the duties and character of the profession. To them, as to the public, the solicitors ever seem to be—

"... a livin' at their ease,
A sending of their writs abowt,
And droring in the fees."

This is (to the professional eye) a pleasing picture; but, as a statement of the facts and prospects of professional life, it is unduly flattering. The public will never be undeceived. They will never recognize that the supply of clients and the remuneration allowed are both inadequate, any more than they will believe that not every lawyer delights in litigation. They will always rely on the fallacious description given by Policeman X. As another critic says,

"They think a lawyer thus must act,
And thus he scarcely can,
But they, methinks, forget the fact
That he, like them, is Man."

The last consideration might, of course, be urged, by anyone so inclined, in mitigation of the popular condemnation; the solicitor is still a vertebrate animal. But the aim of the writer has been to offer, not an apology for the profession, but a brief record of its development.

E. B. V. C.

May, 1896.

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A SHORT

HISTORY OF SOLICITORS.

CHAPTER I.

THE ORIGIN AND EARLY HISTORY OF ATTORNEYS.

The modern solicitor combines in his proper person the functions of several professions. The duties of the ancient attorney, proctor, and solicitor, and part of those formerly discharged by counsel and scriveners, are now performed by the solicitor. It was as an attorney that the solicitor was first known.

An attorney, according to a time-honoured definition, is one who acts in the turn or place of another;[1] the attorney-at-law, who for six centuries was a prominent person in our legal system, was one who acted in the place, or on behalf, of another before the law courts. The right to be so represented, either by a lay friend or a professional advocate, was no part of the original

[1] This definition, so far as it pretends to be etymological, say the editors of "The New Dictionary," is a bad guess. They add that the word appears in English literature in the forms of *atturne*, *atorne*, *attourne*, *atturney*, *attourney*, *aturney*, *atturnie*, *atturneye*, and *atturneie*, and is the past participle of the old French verb *atourner*, "to attorn," in the sense of one appointed or constituted.

practice of the courts. Indeed, before the primitive courts entertained a dispute it was essential that both parties should appear personally in the presence of the tribunal; and there they were required to plead their causes in their own words, and to hear its judgment. The procedure for compelling a defendant's attendance was singularly dilatory and cumbrous, and the attendance must have been irksome, for the litigants were required, it is said, to attend the court on each day of the term while their cause was depending.[1]

The reason for a rule so contrary to the modern instinct of the natural man threatened with law lies in the extreme formalism of early legal proceedings. "The right words must be said without slip or trip, the due ceremonial acts must be punctiliously performed, or the whole transaction will be naught."[2] Hence, Professor Maitland adds,

"Ancient law does not readily admit that one man can represent another in litigation. So long as the procedure is extremely formal, so long as all depends on the due utterance of sacramental words, it does not seem fair that you should put an expert in your place to say those words for you. My adversary has, as it were, a vested interest in my ignorance or stupidity. . . . . Thus the right to appoint an attorney who will represent my person in court appears late in the day. It spreads outwards from the king. From of old the king must be represented by others in his numerous suits. This right of his he can confer upon his subjects, at first as an exceptional favour, and afterwards as a general rule."[3]

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[1] Gilbert, History of the Common Pleas, 26, 27 (ed. 1761).
[2] Professor Maitland, in Social England, I. 171.
[3] Social England, II. 34.

Gradually, then, the rule of personal attendance was relaxed, and the litigant was allowed to appoint another as his attorney formally to appear for him and transact matters of routine. He was also permitted to have a friend to address the Court on his behalf at the trial, he himself, or his attorney, being present and adopting as his own the words used by his more fluent or learned friend on his behalf. It has been argued, with a view to establish the greater dignity of the attorney's calling, that both functions were discharged by the same person; and it is possible that at times the same person acted as both attorney and advocate. But generally this was not the case. The arguments were conducted by the countors or serjeants, men of law specially learned in the practice and policy of the courts, while the attorneys were not in early times true members of the legal profession. "Really," say Sir F. Pollock and Professor Maitland,[1] "these two branches have different roots; the attorney represents his client, appears in his client's place, while the countor speaks on behalf of a litigant who is present in court, either in person or by attorney."

"The attorneys of the period which is now before us," to continue the quotation, "do not seem to be in any sense officers of the court, nor do they as yet constitute a closed professional class. Probably every 'free and lawful' person may appear as the attorney of another; even a woman may be an attorney, and a wife may be

[1] History of English Law, I. 195.

her husband's attorney. A bishop will appoint one of his clerks, an abbot one of his monks, a baron will be represented by his steward, or one of his knights." [1] Even at this period, however, the attorney was appointed "ad lucrandum vel perdendum" to win or lose, for better or worse. "The attorney represents his principal; he has been appointed, attorned (that is, turned to the business in hand), and for good or ill, for gain or loss, he stands in the principal's stead." [2] These things appear in a precedent of a fine given by Glanville,[3] which belongs to that remote period judicially declared to be beyond the memory of man.

"Hæc est finalis concordia, facta in curia domini regis apud Westmonasterium in vigilia beati Petri Apostoli anno regni Regis Henrici secundi tricesimo tertio coram Ranulpho de Glanvilla justicario domini regis, et coram H. R. W. et T. et aliis fidelibus domini regis qui ibi tunc aderant, inter Priorem et Fratres Hospitalis de Hierusalem et W. T. filium Normanum et Alanum filium suum, quem ipse attornavit in curia domini regis ad lucrandum et perdendum, de tota terra illa et de pertinentis," &c.

Another form of fine, given in Madox's *Formulare Anglicanum*,[4] is an example of an appointment by an abbot of one of the monks of his abbey.

"Hæc est finalis concordia facta in Curia Domini Regis apud *Westm.* a die Sancti Michaelis in tres septimanas, Anno Regni Regis Johannis secundo, coram G. filio Petri. . . . . Inter

[1] Pollock and Maitland, I. 192.
[2] Pollock and Maitland, I. 191.
[3] Cited in Digby's History of the Law of Real Property, ch. 2, s. 9.
[4] p. 219.

Simonem de Berevilla Abbatem de *Pipewell* per *Henricum* Monachum suum positum loco suo ad lucrandum vel perdendum de quatuor virgatis terræ," &c.

It was not, however, as a matter of course that attorneys could be thus appointed. The general rule was still that litigants must attend in person; the power to appoint an attorney was conferred by writ out of the Chancery, not to be obtained without payment of fees, while subsequently the right was conferred by warrant of the Barons or other officers of the Exchequer. The appointment might be of one person alone or of two persons jointly; but for a time at least, it could not be made until after the defendant had appeared, and it had to be made in court. "The appointment of attorneys in the place of the plaintiff or defendant," says Mr. Melville Bigelow,[1] was one of the four matters which "embrace with the hearing of common pleas in general, the ordinary judicial business of the regular term." So early as 1227 it had been thought strange that the King's brother, Earl Richard of Cornwall, should urge his claim before the King, "sine aliquo advocato rationabiliter simul et eloquenter." It was not till 1235 that the first mention of the attorney occurred in the statute book, but Glanville (1190) devoted a book to "Attornes who are put in the place of their principals in court to gain or lose for them." The appointment, he said, was generally made in the presence of the judges; the adverse party need not be

[1] History of Procedure in England, p. 245.

present, nor even the attorney to be appointed, if he were known to the court; but on no account could the appointment be made unless the party appointing were himself present in court. The appointment had to be made specially for the litigation; the general authority of a bailiff or steward was insufficient. But when once appointed the attorney's authority was complete until the suit was determined by a judgment or agreement of the parties, though the attorney might be changed by his principal. The writ authorizing the appearance of an attorney was in this form:[1]—

"The King to the Sheriff, or to any other presiding in his Court, Health. Know that N. hath before me, or my justices, put R. in his place to gain or lose, for him in the plea which is between him and R.[2] concerning one plough land or concerning any other thing [*naming it*] and therefore I command you that you receive the aforesaid R. in the place of the said N. in such plea to gain or lose. Witness, &c."

The principal was to abide by what his attorney did. "But what must be done if the principal is incompetent to pay and has nothing whereby he can be distrained, although the attorney has? The attorney, indeed, must not be distrained."

The first legislative reference is in the Statute of Merton (20 Hen. III. c. 10; 1235), whereby—

"It is provided and granted that every Freeman which oweth Suit to the County, Trything, Hundred, and Wapentake, or to the Court of his Lord, may freely make his Attorney to do those Suits for him."

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[1] Glanville, Bk. XI. ch. 2.
[2] "R" is repeated by mistake.

That the inconvenience of personal attendance which eventually led to the appointment of attorneys-at-law, was already generally felt, appears further from a provision in the Statute of Westminster the First (3 Edw. I. c. 42—1275).

"Forasmuch as in a Writ of *Assise*, *Attaints*, and *Juris utrum*, the Jurors have been often troubled by reason of the Essoins of the Tenants, it is provided That after the Tenant hath once appeared in the Court he shall be no more essoined, but shall make his Attorney to sue for him, if he will, and if not the Assise or Jury shall be taken through his default."

But it was long before the practice became universally allowed, and the right to be represented by attorney was gradually extended by statute till a much later date. By the 6 Edw. I. c. 8 (1278) defendants were permitted to "make their attornies in pleas touching Wounds and Maims." Seven years later one finds the first general power of appointment in superior courts, the statute of 1235 having been confined to the inferior tribunals. The 13 Edw. I. st. 1, c. 10 (1285), declares that—

"Such as have lands in divers shires . . . . may make a general Attorney to sue for them in all Pleas in the Circuit of Justices moved or to be moved for them or against them during the Circuit; which Attorney or Attorneys shall have full power in all Pleas moved during the Circuit, until the Pleas be determined or that his Master remove him."

In 1299 the 27 Edw. I. st. 2 enabled persons dwelling beyond sea to make general attorneys, and the privilege

was extended to those unable to travel, and to such unfortunate folk as "dwell in far countries from the Chancery";[1] and by the 12 Edw. II. c. 1 (1318) it was stated that divers Mischiefs had been because Tenants in Assise of *Novel disseisin* might not make Atturnies theretofore, and power was given them so to do, but they might still "plead by Bailiff if they will as they have used to do heretofore." Again, the privilege was extended by 7 Rich. II. c. 14 (1383) to those who departed the realm by the king's licence. In 1405 power was given by the 7 Hen. IV. c. 13, to impotent persons "outlawed by erroneous process of law" to make attorneys; but in spite of these statutes the right cannot have been recognized as certain or universal. Idiots, it is expressly stated, always appeared in person. Nor did idiots stand alone in their inability to appoint. "Attornies are denied me," says Bolingbroke in *Richard II.* The author of *The Mirrour of Justice*, in his long list of abuses, includes appearance by attorney in personal actions, or in any case without writ out of the Chancery. Later statutes still treat the appointment of an attorney as an exceptional matter. In 1417 the 5 Hen. V. c. 1, gives power to all persons

[1] In London a better remedy was found in cases of ejectment of lessees, viz., an action in the local Hustings court: "seeing that the people of the city are traders and have need of speedy remedy for grievances that are done unto them; and the Chancery is sometimes far away from them," *i.e.*, moving with the court from place to place. Liber Albus, p. 255.

to make their attorneys in certain courts until the next Parliament. Nineteen years later the 15 Hen. VI. c. 7, declared that all persons, religious and secular, might make their general attorneys in such courts; and in 1423 it had been thought necessary to enact specially that John, Duke of Bedford, being in the King's service in France, should be received to defend his right by attorney.

Meanwhile, following and perhaps because of the fixing of the Court of Common Pleas in "one certain place," there had been a rapid growth in the number of lawyers. "It was in Edward I.'s time," say Sir F. Pollock and Professor Maitland, "that our legal profession first begins to take a definite shape." "Before the end of the thirteenth century there already exists a legal profession, a class of men who make money by representing litigants before the law courts and by giving legal advice." These were the serjeants, and it appears that the attorneys also had ceased to be lay friends casually assisting in suits, and they, too, had become a professional class. One passes from the consideration of the origin of that class in the unfeed assistance of private friends to the early history of the profession.

At the date of Bracton's book (1256) the law relating to the powers and duties of an attorney was already becoming complex. Differing from a mere bailiff, an attorney could speak like his principal himself against the assise, against the jurors, against the claimant, and

against the justiciary himself, if by chance he had no jurisdiction.[1] So strict was then the rule that a litigant could not appoint an attorney in a suit not actually commenced, that such an appointment would be of no effect, and the mere appointment of an attorney was evidence of the commencement of the suit and service of the summons.[2] Notwithstanding the appointment, the client might come himself and sue, if he would. In such cases, the rules for essoins, or excuses for non-attendance, became difficult of application. If, having constituted an attorney, the principal himself came, "and should have taken a day in his own person, I ask who ought to essoign himself on the other day, the principal or the attorney? It seems that an attorney should not because he was not present at the judgment, nor did he take the day; the principal should not because he has constituted an attorney and has not removed him. It is safer that both should essoin themselves."[3] Again, if several attorneys had been appointed, either could appear alone and represent the principal; but if one were unable to attend, his excuse for non-attendance was of no avail; all the attorneys must be excused or none. Otherwise, after one had been excused, the other might appear, declare his willingness to proceed, and the other side unfairly be put in default. So if an attorney died after appointment, and the prin-

[1] Bracton, Vol. III. p. 409.
[2] V. 227—229.
[3] V. 191.

cipal sent an essoin for his own absence, the essoin was judged to be null, unless the death of the attorney was also proved.[1] But where a litigant, desiring to go to the Holy Land appointed two attorneys, and both died while he was still on his pilgrimage, the trial was stayed until his return. Already the appointment of an attorney had ceased to be a quite simple matter. It is the fate of most reforms of the law to cause its greater elaboration.

That "fantastic amateur" of the law, the author of *The Mirrour of Justice*, writing some thirty years later,[2] devoted to attorneys a short chapter. The book stands declared by modern criticism to be both unauthoritative and unreliable; but as a concise statement of early law the chapter invites quotation, and it is difficult to suppose a reason (except, indeed, ignorance) for falsification on such a subject.

"Before the suit has been moved in court by essoin or attachment or appearance of the parties no one can be received as an attorney; this is no more possible than that a suit should be removed into a higher court before the plaint or writ has been entered; for no one can be received as an attorney in a plea which shall be, but only in a plea which is pending. And if any one be made an attorney while the plea is pending in the county court or elsewhere where it has been commenced by the king's writ, and afterwards the suit is removed into a Higher Court, the attorney is not removed by the removal; and no attorney is removeable unless the person whose attorney he is comes into court in proper person and removes him, or unless it be where he has a general attorney, for a general attorney can

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[1] V. 159.

[2] About 1285—1290, A.D.

appoint and remove special attorneys. And no one can receive an attorney after the suit has been commenced save the king, or another who is warranted thereto by special writ, unless it be in the presence of the parties.

All those who are not prohibited by law may be attorneys, but the law will not suffer women to be attorneys, nor infants, nor serfs, nor any who are in ward, or who otherwise are not *sui juris*, nor criminals, nor excommunicates, nor those who are not in the King's faith, nor one who cannot be a pleader, nor can there be an attorney in personal actions, nor in account, nor in naifty. But plaintiffs may have an attorney in a personal action. And no one can make a concord or a surrender in court by attorney and an attorney who does this disseises his client."

The *Mirrour* also gives a list of persons who cannot be judges, where attorneys appear in strange company. These unqualified persons are "women, serfs, . . . open lepers, idiots, attorneys, lunatics, deaf mutes," and some others.

If the right to appear in court by an attorney was not always clear, in the civic courts of London, at least, it was not clear that the litigant could dispense with their services. In 1259 the king "was compelled to concede to the citizens that in their hustings and other courts they might plead their causes without lawyers. . . . . This looks as if in London there had been an unusually rapid development of a professional caste."[1] Most of the litigation arising within the city was probably decided in the local tribunals, and special regulations were made by the city for the

[1] Pollock and Maitland, I. 194.

conduct of practitioners there. Among the questions put to the citizens at the Iter of King Henry III. in 1221 was one—"How is an attorney to be admitted at the Hustings Court?" To this answer was made that the citizens had special legal privileges. For while they might, apparently, appoint attorneys at will, a "foreigner" or non-citizen could have an attorney only in case he were defendant, and then only by virtue of the king's writ. If a foreigner desired to sue a citizen, he could not act by attorney, for then the good folk of the city might be annoyed and molested at his will.[1] The alderman might record the appointment of attorneys in any of the city courts as the judges did in the superior courts.[2] No countor or serjeant was to plead in the city unless he were "an intelligent person" admitted by the mayor; and no attorney was to be a countor.[3] Attorneys were to be sworn, and if by default or negligence they lost their client's cause, they were to be imprisoned "according to the statute of the king"; and attorneys who were guilty of champerty were to be attainted and suspended from practice.

But outside London attorneys were less amenable to discipline, and there, as in the city, they increased greatly. And the growth of the legal profession was soon followed by malpractices, though at first, it seems, chiefly by the bar. So early as the Statute of Westminster the First it was thought necessary to impose

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[1] Liber Albus, p. 56. [2] p. 195. [3] p. 490.

penalties on any serjeant, pleader or other who was guilty of any manner of deceit or collusion in the King's Court, or consented unto it in deceit of the court or to beguile the court or the party; and champerty and maintenance were forbidden. The statute was held to apply to attorneys; but as they were not named, it was probably the greater men against whose misdeeds provision was made. For some time it was the serjeants of whom the bitterest complaints were made. They were often accused of being "ambidexters" and taking fees from both sides; and in London it was provided that whoever took a fee and failed to appear for his client should return double, and should not be heard against his client; while if, after taking a fee, he allowed himself to be engaged by the other side, he was to be suspended for three years.[1]

Some light is thrown upon the habits of attorneys by a chance reference in the Year Books.[2] Apparently they, like counsel, went circuit, and some at least met with strange misadventures.

"A man held to a default at a petit Cape. The party came himself and said by attorney that eight days before the summons of the Nisi Prius in Cornwall they took their way towards Hereford on a pilgrimage, and took water on the Severn and by tempest were driven into the county of Cumberland, and there on a suspicion that they were alien spies they were imprisoned in such a place and there detained until the feast of St. Michael which was long after the Sittings. SCARSHULLE said privately that it was foolish for the attorneys to go on the water and trust to

[1] Liber Albus, p. 491.

[2] 12 Edw. III. p. 618.

God's taking care of them: Wherefore he said deliberately that that thing did not excuse them."

This is perplexingly obscure. Did the judge reflect merely on the state of contemporary seamanship, or was it intended to suggest that attorneys could rely less than other men upon the protection of Providence? The matter is not elucidated by what follows:—

"Then *Gayneford* said that on the day of the Nisi Prius these same attorneys appeared in other pleas between other parties, and therefore they could not say they were elsewhere."

If those attorneys had been romancing the summary jurisdiction of the court would have been invoked; yet if their story was true, their client surely was hardly treated.

The growth in number of attorneys soon attracted the notice of Parliament, which then and long afterwards chose to regard their existence as inimical to the commonweal, and endeavoured in various ways to check their increase.[1] In 1292 the first such attempt was made, limitation to a fixed number being the object of the legislature. Attached to the Parliament Roll of that year is an ordinance "*De attornatis et apprenticiis.*"

"Dominus Rex injunxit I. de Mettingham et sociis suis, quod

[1] Appearance by an attorney seems, however, to have been not the rule, but still a rare, though decreasingly rare, exception. "Out of the 373 cases reported in the Year-books of the 32nd & 33rd Edw. I. one or more of the parties appeared by attorney in 27 only. In the Year-books 30 & 31 Edw. I., out of the 335 cases reported, one or more of the parties appeared by attorney in only 9. In the Year-books 20 & 21 Edw. I., out of the 261 cases reported, attorneys are mentioned as appearing for one or other of the parties only in 6." "The Legal Profession," 1873, p. 113.

ipsi per eorum discretionem provideant et ordinent certum numerum de quolibet comitatu de melioribus et dignioribus et libertius addiscentibus, secundum quod intellixerint quod curiæ suæ et populo de regno melius valere poterit et majus commodi fuerit et quod ipsi quos ad hoc eligerint, curiam sequantur, et se de negotiis in eadem curia intromittant et alii non. Et videtur Regi et ejus concilio, quod septies viginti sufficere poterint; apponant tamen prædicti justicarii plures, si viderint faciendum vel numerum anticipent. Et de aliis remanentibus fiat per discretionem Justiciariorum."[1]

Whether the judges agreed with Parliament that 140 attorneys were sufficient is not known; but the edict can have been but imperfectly enforced, since thirty years later it was found necessary, by the 15 Edw. II. st. 1, to forbid a practice which had grown up of admission of attorneys by the inferior officers of the court.

"And we will not that any of our Barons of the Exchequer or our Justices shall admit any Attorneys but only in pleas that pass afore them in the Benches and in places where they be assigned by us. And the same powers of admitting Atturneys we prohibit and deny to the Clerks and Servants of the said Barons and Justices; and do ordain That if any Attorney be admitted hereafter by any of the persons aforesaid their Admission shall be of none effect."

The restriction of attorneys to practise in that court alone in which they had been admitted can hardly have tended to decrease the number. In fact the hundred years which followed the order of Edward I. witnessed

[1] In Foss's Judges of England, III. 48, it is conjectured that the words "attornati" and "apprenticii" were used synonymously, and were intended to apply to the bar only.

an abnormal increase.[1] By the end of the fourteenth century the attorneys had become a considerable body of men, and had increased, it was estimated, from the modest seven score which had been thought sufficient in 1292, to no less than two thousand.[2] The cause of this increase lay, it can hardly be doubted, in the litigious character of the times, which has been thus trenchantly described :[3]—

"The fact that so much of the prevalent injustice was committed under or indeed by means of forms of law, is connected with another character of the age, namely, its extreme litigiousness. Legal chicane was one of the most regular weapons of offence and defence, and to trump up charges, however frivolous, against an adversary, one of the most effectual means of parrying inconvenient charges against oneself. The prevalence of false indictments and malicious suits is a frequent subject of complaint in Parliament. Forgery of documents seems to have been common, and when statutes were passed against this practice, advantage was taken of these statutes to throw suspicion on genuine title deeds. False allegations of villenage were made in order to bar actions at law brought by those against whom the allegation was made. Disseisins were followed by fraudulent feoffments in order that the person disseised might not know against whom his action lay. . . . The fifteenth

[1] Of one of these attorneys, Geoffrey of Somerton, uncle of Paston the judge, we find a brief account in the Paston Letters (I. xxi), contained in a contemporary description of the ancestry of the Pastons; perhaps the earliest of the race of whom record remains. It will be seen that he quaintly combined legal and spiritual functions; and long after it was thought strange that an attorney should subsist by that occupation alone. "And as for Geoffrey Somerton he was bond also, to whom, &c.—and he was both a pardoner and an attorney; and then was a good world, for he gathered many pence and halfpence, and therewith he made a fair chapel at Somerton, &c."

[2] Campbell's Lives of the Chief Justices, I., 134.

[3] By Mr. Charles Plummer, in his preface to Fortescue's "The Governance of England," 1885, pp. 31, 32.

century must have been, indeed, a golden time for lawyers. This litigiousness of the time comes out strongly, as might be expected in the Paston Correspondence, especially in the letters of Sir John Fastolf, who like his younger contemporary Commynges not only lived in a world of litigation himself, but left a handsome legacy of legal troubles to his successors. 'Every sentence in them refers to law suits, and title-deeds, extortions and injuries received from others, forged processes affecting property, writs of one kind or another to be issued against his adversaries, libels uttered against himself and matters of the like description.' And Mr. Gairdner remarks very justly on the evidence which the correspondence affords of the wide diffusion of legal knowledge among all classes, not only the men but even the women showing themselves perfectly familiar with the processes and terminology of the law. And, indeed, in such an age some knowledge of the law was necessary, and any one who had more than an average acquaintance with it might render very important service to himself and his neighbours."

It was not, however, to the greed and passions which produced these things that Parliament ascribed the evils plainly existing, but to the increase in the number of lawyers. The Rolls of Parliament for 1402[1] show that the Commons petitioned the king on account of the great number of attorneys. They represented that falsehoods [fauxines], deceits, and disinheriting "had been done, and from day to day were being done continually" within the realm of England. The attorneys, they said, were unlearned in the law; some of them were even of tender age, they were negligent as well as ignorant, were guilty of covin and collusion, improper

[1] Rot. Parl. III. 504.

persons were appointed, erasures were made in writs and records, and for remedy they prayed that not more than four, five, or six attorneys might be permitted in each county. There ensued the statute which made the first attempt, by the establishment, or recognition, of a Roll of Attorneys and otherwise, towards that regulation of the profession by Parliament which has constantly increased in stringency until this day. The 4 Hen. IV. c. 18, a statute framed, it is said, by that Chief Justice Gascoigne immortalised by a fabled encounter with Prince Hal, is as follows :—

"Item.—For sundry Damages and Mischiefs that have ensued before this Time to divers persons of the Realm by a great Number of Attornies, ignorant and not learned in the Law as they were wont to be before this Time it is ordained and stablished That all the Attornies shall be examined by the Justices and by their Discretions their Names put on the Roll, and they that be good and vertuous and of good Fame, shall be received and sworn well and truly to serve in their Offices, and especially that they make no suit in a foreign County; and the other Attornies shall be put out by the Discretion of the said Justices; and that their Masters for whom they were Attornies be warned to take others in their places, so that in the mean Time no Damage nor Prejudice shall come to their said Masters. And if any of the said Attornies do die or do cease the Justices for the time being by their Discretions shall make another in his place which is a vertuous Man and learned, and sworn in the same Manner as afore is said; and if any such Attorney be hereafter notoriously found in any Default of Record, or otherwise, he shall forswear the Court and never after be received to make any Suit in any Court of the King."

Here, then, one finds, if not the origin of the Roll of Attorneys, its clothing with legal efficacy, the establish-

ment of an examination to ascertain the qualification of candidates before admission, and a disciplinary authority vested in the judges; all of which continue to the present time main points in the regulation of the profession. And the Chief Justice further issued a Rule of Court that attorneys should be sworn every term "to deal faithfully and make their ransom to the King's will." Whether the tribute to the old attorneys "learned in the law as they were wont to be before this Time" is an accurate historical record, or an instance of the constant tendency to glorify the past at the expense of the present, is uncertain. But a hundred years earlier the same complaint had been made. The mayor and aldermen of London "had been compelled to lament the ignorance and ill manners of the pleaders and attornies who practised in the civic courts and to ordain that none should habitually practise there who had not been duly admitted by the mayor."

In London special supervision was attested by frequent regulations. No pleader or attorney, it was ordered in the time of Henry VI., "shall be heard to plead for his client within the Bar in the Sheriff's Court; but they shall stand without the Bar, without making outcry or noise; that so the people of the law and the good folks of the City, may be heard in due manner as to their business, which they have to transact in the said City—always excepting such persons as have to sue for the King or for the City." The same ordinance continued:

"Item, that no pleader or attorney, when instructed, shall enforce any man to sue another falsely, by a false action, and one fabricated for aggrievance. And if any one shall do so, and shall thereof be attainted, upon examination of the said pleader or attorney before the Mayor and Aldermen he shall be made to forswear the Court for one year." And the jealousy with which the City defended its privileges appears from the next rule. "And in the same manner it shall be done if they allege any false foreign matter to oust the Court of its jurisdiction."

The statute of 1402 failed to remedy evils which sprang from matters rooted deep in men's nature, which were less amenable to parliamentary treatment than the number of attorneys. Statutes in the Middle Ages "were often mere admonitions; they expressed but an ideal, a pious intention."[1] In 1411, when the Commons again petitioned the king,[2] "the great multitude of attorneys" was still the burden of their complaint. Again, "great and grievous complaints" had been made; errors, deceits, injuries, extortions were laid to their charge. And the Commons again suggested a limit in number of attorneys for each shire—six or eight or ten or twelve according to its size; and, moreover, that they should be sworn "d'an en an & de terme en terme d'estre soialx & loialx a vous & de fair droit & loialte a toutz voz lieges en toutz casez q'ils aueront affaire en voz ditz

[1] Watt, "The Law's Lumber Room," 1895.
[2] Rol. Parl. III. 642.

Courtes." The Commons injudiciously added a suggestion that the "Prenoterie and Filacers" should not practise as attorneys, and these officials probably had stronger interest at court than the unbeneficed practitioners. In answer to the petition the King maintained his officers' rights, but as to the number and oaths of the attorneys, "le Roy le voet."

Thereupon the attorneys took alarm, and the "Clerks Attorneys of both Benches" promptly presented a counter-petition[1] deprecating the most serious injuries likely to be caused to them by the previous order, which, they at the same time protested, it was impossible to execute. The King, suffering thus from the difficulty felt by Judge Gripus of old in deciding a question confused by the conflicting statements of opposing parties, resorted to the common-form expedient of statecraft. The matter was referred to the justices to consider and report, and there apparently it ended.

The next statute dealing with attorneys was in some measure for their protection, for it prevented the competition with them of privileged persons, likely by undue influence to be in a position to divert the course of justice. During a sheriff's period of office, it was enacted, in 1413, "no Under-sheriff, Sheriff's Clerk, Receiver nor Sheriff's Bailiff" in his service was to be attorney in the King's Court. The same obvious

[1] Rot. Parl. III. 666.

necessity for keeping the administration of justice free from control by the agents of litigants had moved the Commons to petition in 1392 that no clerk of either bench, or of the assizes, who engrossed records and pleas, might be attorney or counsel on either side; and with the same view it had been asked the year before that all attorneys might freely search the rolls of proceedings, and that clerks refusing to produce them might be committed to prison. And in London, it was ordered that no attorney should be seated in the Hustings Court among the clerks nor meddle with the Rolls.[1]

The strict rule requiring the appointment of attorneys to be made before certain judges caused inconvenience, and in 1391 the Commons petitioned that other judges might be empowered to record such appointments; and in the same year the Parliament Roll discloses a specific case of the malpractices from time to time alleged in general terms. One Johan Sumpter, it was alleged, had persuaded the petitioner to appoint him attorney, had sold her estate and kept the purchase-money. This was referred to the Chancellor to summon the parties and hear the complaint. Thirty years later another case occurred, when one, Brampton, was ordered to be discharged from an obligation made by a "pretended attorney" on his behalf. Gradually, a sense of professional privilege must have grown up, the disassocia-

[1] Liber Albus, p. 492.

tion of the advocate from the cause, his freedom from personal responsibility for his clients' demerits, for in the reign of Elizabeth in the Statute against Forgery (5 Eliz. c. 14—1562) it was provided that attorneys should not be punishable for pleading a forged deed for their clients, if they themselves were not party to the forgery.

Even more important was the growth of another privilege, that cause of all our bliss and all our woe, which, in time to come, was to be the quality peculiarly associated in the popular mind with the profession—the right to recover costs. When litigation was conducted in person, the costs a litigant incurred could have been but little more than the judge's fees. But when professional assistance became usual and had to be paid for, the successful party was not indemnified, as it was manifestly fair he should be, by a judgment which awarded to him merely the amount of his original loss. The judges did not wait for Parliamentary authority to redress this evil. "All judgments," we are told, "ended, 'and the said A. B. in mercy,' *i. e.*, that he be amerced by his lord, or by the judge, for the expenses incurred by his wrong-doing."[1] These expenses were originally small, but when they had "increased to such a degree as to become an object of consideration,"[2] it was thought more proper to declare the right by an express law than to leave it to the discretion of the

[1] White, Outlines of Legal History, p. 151.
[2] Sayers' Law of Costs, 1768.

judge. Hence came the Statute of Gloucester (6 Edw. I. c. 1—1278), which runs:—

"And whereas before Time Damages were not taxed but to the value of the Issues of the Land it is provided That the Demandant may recover against the Tenant the costs of his Writ purchased, together with the Damages aforesaid."

This statute, we learn from Coke, was liberally interpreted. "Here is express mention made but of the costs of his Writ; but it extendeth to all the legall costs of the suit, but not to the costs and expences of his travell and losse of time; and therefore costages commeth of the verb *conster;* and that again of the verb *constare*, for these costages must *constare* to the Court to be legall costs and expences." The right was extended from real actions to personal actions by the Statute of Westminster the Second (1285), and the practice extended from the common law tribunals to the Equity Court. The 17 Rich. II. c. 6 (1393) provided that "Upon an untrue suggestion in the Chancery, Damages may be awarded," though costs were not in equity awarded as of course.[1] The defendant's right to costs was earlier in origin but later in completion. The Statute of Marlbridge, 52 Hen. III. c. 6 (1267) gave him costs in cases relating to wardship in chivalry; two statutes of Hen. VII. gave costs to the defendant "in error," and another of that reign to defendant in replevin; but the general right of a successful defen-

[1] Beames, "A Summary of the Doctrine of the Court of Equity with respect to Costs" (ed. 1810).

dant was only allowed by the 23 Hen. VIII. c. 15 (1531).

The scale upon which the legal *costages* were calculated may in some measure be estimated from an entry made in the parish books of St. Margaret's, Westminster, in 1476.[1]

> "Paid to Roger Fylpott, learned in the law, for his Counsel giving three shillings and eight pence, with fourpence for his dinner."

Other examples of the fees paid to the serjeants and apprentices have been found, *e. g.* :—

		s.	*d.*
"1491.	For costs in the law—		
	To Mr. Wode, Serjeant	3	4
	To Mr. Small and Mr. Marrow, each...	3	4
	To Mr. Wode, Small, and Marrow, each	10	0
	For copying of the testament to Mr. Marrow's clerk	3	4
"1500.	To Mr. Marrow at my Lord Mayor's house, when the Abbot's Counsel were there to overrun the note	3	4
	To Mr. Thos. Sharpe for writing the note that was destroyed by us at the Abbot's inn		8
	For a copy of the note		4"

In the time of Henry VIII. the fees were still small. Serjeant Yaxley, the head of the Bar, agreed with a client to attend on his behalf at the assizes at York,

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[1] Campbell, Lives of the Chancellors, II. 358. The Year-book for 12 Edw. III. contains a case in which the plaintiff alleged he had been appointed defendant's attorney for ten years, taking twenty shillings for every year; and even that small fee was in arrear.

Nottingham, and Derby, for 40 marks (26*l.* 13*s.* 4*d.*) and his expenses, 5*l.* being paid on account and as a retaining fee.[1]

If these were the Serjeant's fees, the attorney's remuneration, even allowing for the greater value of money, can hardly have been exorbitant. "Attorneys shall not take more of their clients than forty pence at most," said the Liber Albus.[2] A specimen bill of costs preserved in the Paston papers[3] of 1472 consists almost entirely of disbursements.

Termino Sancti Michaelis Anno xj° E iiij^ti pro Ricardo Calle diff versus Willielmum Huggan q. placito trans:—

In primis, for a copy of the bill		iiij*d.*
Item, for makyng of the awnswer to Mr. Pygot, Mr. Fayrefax, and to Mr. Hosy ...	x*s.*	
Item, wyne and perys at tavern ij tymes ...		xiiij*d.*
Item, for a copy of record in the Kynges Bench	ij*s.*	iiij*d.*
Item, for pledyng of record in the Kynges Bench a yenst Will. Huggan	x*s.*	
Item, given to Hosey, the xxvij day of the same moneth for to enparle to the bill ...	ij*s.*	iiij*d.*
Item, the xxx day of October for the copy of the tytelyng of Huggan's plee		iiij*d.*
Item, for wyne at [the] Cardenall Hatte the same day		vj*d.*
Item, the iiij day of November, gyven to Mr. Fayrfax and Mr. Hosey for puttyng yn of the replicacyon	vj*s.*	viiij*d.*

[1] The fee to counsel appears to have been then regarded as a subject of contract, and not as now an honorarium, for this arrangement was made by deed. But it has been judicially declared that such contracts can have related only to services in non-litigious business: *Kennedy* v. *Brown*.

[2] p. 492. The reference is to Letter-book G, A.D. 1353—1375.

[3] Vol. III. p. 25.

Item, the x day of November, gyven to Mr. Fayrfax, Mr. Pygotte and Mr. Hosey for the seyng of the paper and comenyng of the issewe a yenst Will. Huggan	xs.	
Item, for the wyne at the Cardenall Hatte ...		viij*d*.
Item, for the entre of the aunswere ayenst Huggan by Ric. Calle payd to Sandys ...	vs.	
Item, to Nedersole for makyng of the paper...	ijs.	vj*d*.
Item, for the copy of the same	ijs.	vj*d*.
Summa totalis ... ...lvjs.	iiij*d*.	

Doubtless, however, the charges seemed ample to the clients, and it is possibly to the right to recover costs that the increase in the number of attorneys, which had again attracted the attention of Parliament, was due. In 1455 a curious statute of "how many Attornies may be in Norfolk, how many in Suffolk and in Norwich" was passed (33 Hen. VI. c. 7), which was not repealed till 1843. The Statute was founded on a petition of the Commons[1] which ran :—

"Prayen the Commons, that whereas of late were but vi or viii common Attorneys within youre Cite of Northwyche and Countees of Norffolk and Suffolk at ye moost, that resorted unto youre Courts, in which tyme yer was grete quiete and peas in your seid Cite and Countees, and litell trouble or vexation had by foreyn or wrongfull sewtes; and hit is so nowe that yer be in the said Cite and Countees xxiiij Attorneys or moo, the most parte of theym not having any oyer lyving; but oonly yer wynnyng by yer seid attorneyshep and the moost parte also of theym not being of sufficient konnying to be any Attorney, which goo to every Faire, Merkette and oyer places where congregation of peouple is, and stere procure move and excite the people to take untrewe sewtes foreyn sewetes for lite trespasses

[1] Rot. Parl. V. 326, 327.

lite offenses and small sommes of dette, the actions of whome be triable and determinable in Court Baron affermyng and promysing the seid people for to have recovere with great damages for their costages; the which causeth many a seute to be take for evill wille and malice without reasonable cause; and also the seid Attorneys before any recoverie or remedie had for their clientes, sewe ye same Clientes for their fees, and have theym in Exigents, and often tyme outlawe theym or they be ware; and than wole the seid Attorneys not end with their seid Clyentes but if they have their costes and fees atte yer owen wille, as well for the secunde action, as for the first, to ye grete and importable damages manyfold vexation and trouble of the inhabitants of ye said Citee and Countees, to the perpetual distruction of all ye Courtees Baron in the seid Countees oonlesse yan the sooner remedie be had in this behalf."

Wherefore his Highness was prayed "for to have these premisses" in his tender consideration, and to enact—

"That at all tymes hereafter ther be but VI common Attorneys in the seid Countee of Norff' and VI common Attorneys in the seid Countee of Suff' and II common Attorneys in the said Citee of Norwiche to be Attorneys in Court of Record, and that all the seid XIIII Attorneys be electe and admitte be fore too Chief Justices for the tyme being of the moost sufficient and best lerned after her wise discretion; and that the election and admission of all Attorneys, that be electe and admitte be the seid Justices for the tyme beyng over the said noumbre in the seid Countees be voide and of noon auctorite ne recorde."

The petitioners further asked that any person not so elected venturing to practise might upon conviction by a "Justice of ye pees" be liable to a penalty of 20*l.*, to be recovered in an action of debt. To all this, answer was made that "the Kyng graunteth yis petition if it

be thought to the Judges resonable." The judges seem to have seen no objection, and the petition being duly turned into Latin took its place in the Statute Book.[1] Here, then, we have an official and precise statement of the "sundry damages and mischiefs" caused to clients by the excessive number of attorneys, which in the Statute of Henry IV. had been left vague.

It is not known how long (if at all) the statute was enforced. Certainly it was disregarded long before its repeal. In one of the oldest Law Lists, that for 1780, the names of thirty-six attorneys appear in Norwich alone; in 1842 there were eighty-two in the city, and a proportionate excess in the two counties. It might be curious, said an editor of Blackstone, to inquire how the statute was evaded.

Norfolk was long reputed specially litigious. "Norfolk full of wyles" was a proverb; old plays represent the Norfolk lawyers as longing for term time. Nearly 300 years later Arbuthnot made Mrs. John Bull tell her husband that he must have Norfolk blood in his veins, so fierce and litigant was he. The Paston property lay chiefly in Norfolk, and in the account of that vast whirl of litigation which fills the Paston Letters, one would expect to find frequent references to the attorneys of the time. But in fact such references are rare—strong testimony, it has been said, to the unimportance of the fifteenth century practitioner.

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[1] 33 Hen. VI. c. 7.

But many of the proceedings, it must be remembered, were high-handed acts of oppression or revenge, euphemistically styled "remedy by the act of the party." Much of the Paston litigation was in the spiritual courts, where proctors took the place of attorneys. Nevertheless, we hear that Roberd Branton, attorney in a suit against Agnes Paston, was right busy at London;[1] and we meet more often John Booking, who appears to have been attorney for Sir John Fastolf and the Pastons, and was probably a private attorney attached to the family. He writes long letters full of technical details to his "masters" (indeed, all the correspondents are familiar with every detail of process), but the litigant when in London wrote to the attorney or to the vicar of the parish indifferently when evidence was to be collected or information obtained. Booking quaintly mixes law and personal devotion with the pious commendations that formed the conventional epistolary flourishes. "The atteynte abideth unreuled til the next terme, as I shall tell yow, and it shal doo well with God is grace, hoe have yow in kepyng and all youres. . . . . Your owen J. B."[2] After long service, Booking seems to have wavered in his allegiance, and to have given evidence against Sir John Paston, and a correspondent refers contemptuously to him as "illo negro Hibernico oculis obliquo et lusco."[3] Another attorney, Bartholo-

[1] Paston Letters, I. 218. [2] I. 386. [3] I. 523.

mew Elys or Ellis, who at one time acted for Sir John Paston in keeping his local courts, also turned evidence against his old employer, and of him we have an unfavourable account. His evidence when given was marked "improbable"; John Paston had written unfavourably of him and it in anticipation. "Bartholomew Elys, John Appylby and John Clerk ar the wytnesses; and as for Barthew Elys, he is outlawyd . . . . and as for John Appylby he is half frentyk, and so take in the towne, notwithstanding he is an atorny, as Barthew Elys is in the Bayly's Coort of Yermouthe."[1] An anonymous correspondent wrote about 1460 to Yelverton and Paston[2] referring to the "importable" costs they had already incurred in their litigation, and were likely to incur in future if the strife continued. They needed during the last term, he said, to have had three solicitors, considering the litigation then pending. But the clients were well able to protect their own interests. Of Sir John Fastolf, the cause of most of the trouble, Mr. Gairdner says: "Sir John Fastolf would have made an acute and able, though, perhaps, not very high-minded solicitor."[3] Comparatively unimportant as the attorneys seem in the correspondence, the stout old litigant himself did not value their assistance lightly. "Nowadays," he wrote, "law goes by favour and according as the attorneys are wise and discreet in their conduct."

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[1] Paston Letters, II. 298, 299. [2] I. 521. [3] I. lxxxvii.

Parliament itself seems to have taken the same view. In 1494 it enacted[1] "a mean to help and speed poor people in their suits," which stated as its cause the King's desire that indifferent justice should be had and ministered to all his true subjects, as well to the poor as rich. But seeing that the poor subjects "be not of ability, ne power to sue, according to the laws of this land, for the redress of injuries and wrongs to them daily done," it was ordained that such poor folk should have writs without payment of fees; and the judges were to "assign to the same poor person or persons counsel learned by their discretions which shall give their counsel nothing taking for the same; and the justices shall likewise appoint attorney and attorneys for the same poor person or persons, and all other officers requisite and necessary to be had for the speed of the said suits to be had and made, which shall do their duties without any reward for their counsels, help, and business in the same." The origin of pauper suits is, therefore, remote; and more ancient even than the age of Henry VII., if, as is supposed, this statute is merely declaratory of the common law.

[1] 11 Hen. VII. c. 12.

CHAPTER II.

ATTORNEYS UNDER ELIZABETH AND JAMES I.

From the reign of Henry VI. to that of James I. no further attempt was made by Parliament to limit the number of practitioners. But that complaints had not ceased is clear from the picture of the times of Henry VIII. contained in *Starkey's Life and Letters*.[1] In the "Dialogue between Cardinal Pole and Thomas Lupset" reference is made to the excessive number of proctors and attorneys. Proctors and brokers of both laws, who rather troubled men's causes than finished them justly, were declared to be too many; yet good ministers of justice were too few. Some provision, it was said, should be made against the multitude of ministers of the law. They were too many in all, and too few were good. But the Cardinal gave this as merely one of many instances of the disproportion between members of the body politic: priests were too many, but good clerks too few; monks and canons too many, but good religious men too few; merchants too many, except

[1] England in the Reign of King Henry the Eighth, Part I. Starkey's Life and Letters. . . . Edited by Sidney J. Heritage, B A. Early English Text Society, 1878.

those who dealt in the necessaries of life; of servants there were too many, of craftsmen not enough; makers of trifles were too many, but artificers too few, and so forth. Indeed, it is necessary to remember that many as were the criticisms on the men of law, censures on those who followed other vocations were not less common or severe. The practice of medicine was felt to be in great need of regulation. The 14 & 15 Hen. VIII. c. 5 (1522) declared that "the science and connyng of Physike" and surgery, to the perfect knowledge whereof both great learning and ripe experience were necessary, was daily within this realm exercised by a great multitude of ignorant persons, the great part of whom had no manner of insight in the same, nor any other kind of learning. Some of them did not know their letters. "Common artificers, as smiths, weavers and women," boldly and accustomably took upon them great cures and things of great difficulty, in which they partly used sorcery and witchcraft, and partly applied to the disease medicines which were noxious and unsuitable, "to the high displeasure of God grete infamie to the faculties and the grevous hurt damage and distruccion of many of the Kyngs liege people most specially of them that cannot discerne the uncunnyng from the cunnyng." Bailiffs exacted money from their inferiors; sheriffs summoned "an unreasonable multitude of jurors for to extort money from some of them for letting them go in peace, and juries pass many times by Poor Men and the rich Men abide at

Home by reason of their bribes." Parliament complained with some cynicism of "the usual perjury of jurors . . . . the which perjury doth abound and increase daily more than it was wont." The most minute regulations for the conduct of all businesses were made only to be broken. The dress, the food, the social habits of the country all called for censure and control by Parliament.

But Starkey had other grounds of complaint against the law. Causes were unjustly removed from inferior courts to London, said Pole, though Lupset reminded him that indifferent justice could hardly be obtained locally if the oppressor were strong in his own district. The law should send strong judges, replied Pole, and appeals to London be abolished. Statutes were too numerous; they should be in English or Latin, not in "this barbarous tongue, old French." Then causes lasted too long, process ought not to be liable to be stopped "by every light and covetous serjeant, proctor or attorney." Again, he says, the proctors were avaricious and covetous; they ought themselves to bear the costs of both sides if they were the cause of the delay. "Only such whose virtue and honesty and good learning in the law were by many years proved should be admitted to practise in causes, and such as look not for all their living of their clients but gentlemen who have other land office or fee sufficiently to maintain themselves withal."

Some attempt was made by the legislature to prevent

suitors bringing in the superior courts actions which could be disposed of in local tribunals. The 6 Edw. I. c. 8 provided that no action should be brought in the King's Court for less than forty shillings—then, of course, not so small a sum as now; and the 43 Eliz. c. 6, s. 2, aimed at "the infinite number of trifling suits," declared that if in any personal action the judge certified that the debt and damages did not amount to forty shillings, the plaintiff should recover no larger sum as his costs of suit. The judges can hardly have supported Parliament in the matter. Tangle, the litigious hero of Middleton's "The Phœnix" (1607), declared: "I have been a term broker myself any time this five and forty years; a goodly time and a gracious. . . . Nay, more, *in felici hora* be it spoken, you see I am old, yet have I at this present time nine and twenty suits in law . . . and all not worth forty shillings." Yet it is stated that no precedent has been found of a certificate made under the statute.[1]

It is not hard to find the reasons why litigants insisted on bringing their actions in the King's Courts. Justice was less likely to be even-handed when local influence was strong; often the local courts had fallen into decay. But even more potent a reason, probably, was the litigant's sense of the magnitude of his wrong and his determination to go to the fountain head of

[1] Sayer's Law of Costs, 1768. The provision that costs should not exceed the damages was extended by 21 Jas. I. c. 16, to actions for slander and libel, and by 22 & 23 Car. II. c. 9, to actions of trespass.

justice. The litigant is a ferocious animal, and, until reflection followed the verdict, few men would consider their cause trifling enough to be determined by any inferior officer. What Hale wrote a hundred years later was doubtless already true. "Many petty businesses, as trespasses and debts under forty shillings, are now brought at *Westminster*, which used to be despatched in County or the Hundred Courts; and yet the Plaintiffs are not to be blamed, because at this day those inferior Courts are so ill-served, and Justice there so ill-administered that they were better seek it (where it may be had) at *Westminster* though at somewhat more Expence."[1]

Some attempt was made by Rules of Court to limit the number and secure the efficiency of attorneys. They were expected to be in regular attendance upon the court and to confine their practice to it alone. The courts long struggled with the natural tendency of the attorney to follow his business into the court proper to its transaction; the judges of the courts were jealous of their business, as well they might be who were paid by fees. In 1564, the Court of Common Pleas issued an order which declared that:—

"Forasmuch as it is thought by the Justices that the Attorneys' Fees of this Court are sufficient Fees for every of them to give his continuall Attendance here upon his Clyents causes, and that they being over much occupied with suits in other Courts have no such regard or care of the suits here as meete it

[1] The History of the Common Law of England, 3rd edition, p. 175.

were they should, and thereby and by their absence they not only slack their Clyents causes in this Court but also are the causes of many errors and discontinuances of the same for lack of their good diligence, to the hinderance of their clyents and great disorder and trouble of this Court: For the Reformation whereof and increase of knowledge in Attorneys in such suit as belong to this Court *It is ordered* That every such Attorney shall satisfie himself with the suits in the same and forbear to be towards any causes as Plaintiff directly or indirectly in any other the Queens *Majesties* Courts here at *Westminster* other than causes touching themselves and the pursuit of proces and writs returnable here, upon payne for doeing the contrary to be expelled out of the Attorney's Rolle of this Court and further to make Fine at the discretion of the Justices."[1]

The King's Bench Court, too, threatened to deprive an attorney absent for one year, unless hindered by sickness, of his privilege as attorney, and both courts forbade attorneys to allow other persons to use their names, or themselves to practise in the name of any other person, on pain of being put out of the Roll.

Much of the work now done by solicitors in the preparation of writs and other legal documents was then done by the officials of the court, and in the Common Pleas the attorney, on admission, had to elect in which of the three Prothonotaries' Offices he would "settle himself and his business"; thereafter he was not to change without leave of the court. The prothonotaries also made copies of documents; and copies, especially in the Chancery, were long the causes of one of the greatest scandals attendant on litigation. Succes-

[1] Praxis utriusque banci. 1674.

sive Chancellors were destined to struggle vainly to compel the officers of the Chancery Court to keep within reasonable length, and to give good measure in the documents for which the solicitors were compelled to pay. But in the Common Pleas the judges supported the prothonotaries against the attorneys; and the order of 6 & 7 Eliz. was made "for redressing the slackness of attorneys for paying the Prothonotaries for their entries, and in taking copies of such entries of their Clerks and paying for the same." This order, made "at request of the said Prothonotaries and for the advancement of their clerks, whereof many by God's grace shall grow good Prothonotaries hereafter to serve this Court," and required that all fees should be paid by the last day of term following the making of the entry to which they referred.

"Item.—It is ordered that the sayd Attorneys shall Termly take coppyes of every matter whereunto they shall appear for ther Clyents and pay for them the fees due for the same."

Any attorney having the hardihood to neglect this order was to be put out of the roll, if, after complaint, he still failed to pay the fees, and the prothonotary giving more than the prescribed credit was to be fined.

In 1567 the court thought it necessary to make a general inquiry into the abuses then prevalent. That court had the greatest number of officers, and hence, said Sir James Dyer, Lord Chief Justice, most faults. A jury of twenty-four attorneys and officers was impannelled to inquire into the misdemeanours, and to

them the Chief Justice delivered a charge in which he deprecated the "greedy and inordinate desire to be suddenly inriched." "Men," he said, "cannot abide and tarry time and space, but in all post haste must be rich and have abundance by and by. This posting and hasting and running after Riches this great thirst and covetousness is reproved and condemned as most detestable." The haste and negligence in practice caused miscarriage of justice which brought scandal on the court.

"And the poor man and Clyent that hath suffered this harme and losse he getteth him home with a heavy heart by Weeping Crosse and cryeth *oleum et operam perdidi*, I have lost my labour, my money my cause all is lost what shall I now doe? Then he beginneth to think evill of us that are Judges, and to suspect our skill, then he curseth his Counsellor and Attorney and speaketh evill of the Law."

What the jury did is not recorded in the *Praxis*, but six years later the court took into consideration "the excessive and unprofitable number of attorneys." All attorneys, it was ordered, who had "not been towards any cause or matter in this court for the space of two years last past shall be put out of the roll"; and the like order was to be kept thereafter. The idea of a judicially fixed minimum of business, below which no attorney should be allowed to fall, is strange to modern readers. Every attorney was ordered to be in attendance by the third return day of Michaelmas term, and the second day of every other term, under penalty of 3*s.* 4*d.* to the box. The attorney, who was also a prothonotary's

clerk, was not to draw up the record in his own cases, though the two offices were not separated until the time of Charles I.; the litigant discharging the duties of the judge had too obvious an opportunity of malpractice. Another difficulty arose. The court had, at a time not stated, deputed to the prothonotary the task of entering up judgment, and of taxing the costs which at an earlier time were assessed by the judges themselves. But as some attorneys were clerks of the prothonotaries they were tempted (and sometimes yielded to the temptation) to enter up judgment before the costs were "taxed or rated and allowed" by the prothonotary. They entered up, it is said, great and excessive sums, and the costs were not rated or taxed, but the practice was not forbidden until the Order of 1614. Rules were made to prevent the delivery of process by officers of the court to any but the attorney engaged or his clerk well known to the court, and the explanation given concerning this order throws some light on the customs of the time. Attorneys, it is declared, were used at the end of every term to depart, leaving to other persons the suing out of mesne process, &c. The terms during which litigation could proceed were then short, and apparently many attorneys crowded at these times to the courts, hurrying back to their clients in the country as soon as term was over. By other rules it was sought to exclude the unqualified practitioner. Any person not an attorney or clerk, suing out a fine or recovery was to be fined forty shillings and committed to the Fleet. By Orders of

1582, attorneys were to be admitted but once a year, in Michaelmas term, at a meeting of the judges held for the purpose. The rules against absence from the court were made more stringent. Any attorney absent for two terms, except for sickness or the like cause, was to be forejudged and no longer attorney. That, indeed, was the almost universal penalty for professional misdoings. For such small offences as bringing an action in a county other than that where the cause of action arose, a fine of forty shillings might suffice; but the general penalty was expulsion. How this punishment was inflicted appears from a case which occurred in 1588.

"One, *Osbaston*, an Attorney for falsifying and forging a Writ of *Capias*, was ordered to be put out of the Roll and Cast over the Barr"—*i.e.*, the bar which separated the court from Westminster Hall—"and fined five pounds, and sworn never to practise after as Attorney and to be brought to the King's Bench and Exchequer that knowledge might be taken off him, That he was not to practise any longer as Attorney in those Courts."

The two processes of extending the right of representation by attorney and of limiting the number of practitioners still continued side by side. In 1587 the 29 Eliz. c. 5 allowed persons against whom proceedings under penal statutes were taken, when bailable by law, to appear by attorney at the time stated in the process against them, and to defend the proceedings without personal attendance, a privilege afterwards restricted to

"natural-born and free denizens." The preamble to the statute contains a concise statement of the hardships caused by the old law; it declared that:—

"Divers Her Majesty's loving Subjects dwelling in the remote parts of this Realm are many times vexatiously troubled upon Informations and Suits exhibited in the Courts of the King's Bench, Common Pleas, and Exchequer upon penal statutes, and are drawn up upon process out of the Countries wherein they dwell and are driven to attend and put in Bail to their great Trouble and undoings."

The other tendency of legislation was again illustrated by the 3 Jas. I. c. 7. By 1605 the increase of attorneys, in spite of previous prohibitions, had again become apparent, and again the number of practitioners was supposed to be the cause of malpractices. A parliamentary draftsman with a nice turn for alliteration thereupon produced "An Act to reform the *Multitudes and Misdemeanors* of Attornies and Solicitors at Law and to avoid unnecessary Suits and Charges in Law." The preamble states "that through the Abuse of Sundry Attornies and Solicitors by charging their Clients with excessive Fees and other unnecessary Demands, such as were not nor ought by them to have been employed or demanded, whereby the subjects grow to be overmuch burthened and the practice of the just and honest Serjeant and Councellor at Law greatly slandered," and "that to work the gain of such Attornies and Solicitors the Client is oftentimes extraordinarily delayed."

It is easy from the reference to "the just and honest

Serjeant and Councellor at Law" to see who were the moving spirits in this matter. The attorneys, one may be sure, were less well represented in Parliament than these just and honest men of the other branch of the profession; and the statements in the preamble may be usefully compared with those contained in Harrison's "A Description of England," in Holinshed's Chronicle. After a brief reference to the various courts, the author says:—

"Finally how well they are followed by suitors the great wealth of Lawyers without any travel of mine can readily express. For as after the coming of the Normans the nobility had the start and after them the clergy so now all the wealth of the land doth flow unto our common Lawyers of whom some one having practised little above thirteen or fourteen years is able to buy a purchase of so many one thousand pounds: which argueth that they wax rich apace, and will be richer if their clients become not the more wise and wary hereafter. It is not long since a sergeant at the law—whom I could name—was arrested upon an extent for three or four hundred pounds, and another standing by did greatly marvel that he could not spare the gains of one term for the satisfaction of that duty. The time hath been that our lawyers did sit in Paul's upon stools against the pillars and walls to get clients, but now some of them will not come from their Chambers to the Guildhall in London under ten pounds, or twenty nobles at the least. And one, being demanded why he made so much of his travel, answered that it was but folly for him to go so far when he was assured to get more money by sitting still at home. A friend of mine also had a suit of late of some value, and to be sure of counsel at his time, he gave unto two lawyers, whose names I forbear to deliver, twenty shillings a piece telling them of the day and hour wherein his matter should be called upon. To be short, they came not to the bar at all; whereupon he stayed for that day. On the

morrow, after he met them again, increased his former gifts by so much more, and told them of the time; but they once again served him as before. In the end, he met them both in the very hall door, and, after some timorous reprehension of their uncourteous demeanour toward him, he bestowed either three angels or four more upon each of them, whereupon they promised peremptorily to speak earnestly in his cause. And yet for all this, one of them not having yet sucked enough, utterly deceived him: the other indeed came in, and, wagging a scroll which he had in his hand before the judge he spake not above three or four words, almost so soon uttered as a 'Good morrow,' and so went from the bar. And this was all the poor man got for his money, and the care which his counsellors did seem to take of his cause then standing upon the hazard."

Clearly there were some observers who took a less favourable view than did the Parliament of the just and honest serjeants and counsellors at law, and there had been a rapid change from the days when a serjeant learned in the law was content with a fee of 3*s.* 8*d.*, even with an added "fourpence for his dinner."

It is less easy to test the truth of the charge that extraordinary delay was caused by the attorneys in their clients' suits. If delay meant more proceedings and therefore greater charge, the temptation to the attorneys would be apparent; but, on the other hand, if, as is probable, delay in concluding the suit involved delay in payment, there would be the most excellent inducement to dispatch. Certainly, delay in the administration of justice at that time has been more often attributed to the Chancellor than the attorney, and it is curious that the four "bad instruments" which Bacon in his almost contemporary "Essays" detected

in the "clerks and ministers" of justice do not include those guilty of wilful delay. "First," he said, "certain persons are sowers of suits which make the court swell and the country pine: the second sort is of those that engage courts in quarrels of jurisdiction and are not truly '*amici curiæ*' but '*parasiti curiæ*' in puffing a court up beyond her bounds for their own scraps and advantage: the third sort is of these that may be accounted the left hand of courts: persons that are full of nimble and sinister tricks and shifts, whereby they prevent the plain and direct courses of courts and bring justice into oblique lines and labyrinths: and the fourth is the poller [plunderer] and exacter of fees; which justifies the common resemblance of the courts of justice to the bush, whereunto, while the sheep flies for defence in weather, he is sure to lose part of his fleece." He adds a general and severe condemnation which goes some way to support the earlier allegations of the statute. "'Grapes (as the Scripture saith) will not be gathered of thorns or thistles,' neither can justice yield her fruit with sweetness among the briars and brambles of catching and polling clerks and ministers."

Whatever the truth of the allegations in the preamble, the enactments of the statute of 3 Jas. I., were salutary, and presumably effective, since Parliament did not again feel called upon for fresh legislation until the reign of George I. The first provision of the Act of 1605 required vouchers for any disbursements made by the attorney on his client's behalf. No attorney was to

be allowed "from his client or master" any fee paid to any serjeant or counsellor, or for copies to any clerk or officer of the court "unless he have a ticket," signed, and stating how much was paid, when, "and how often."

The status of the attorney had clearly altered; he had ceased to be merely a servant of the litigant. Formerly his employer was always the attorney's "master"; now the more courteous alternative of "client" received parliamentary recognition.

The second provision was of wider scope. The attorneys were to give a true and signed bill unto the masters or clients of all other charges before they should charge the client with their fees. This is, apparently, the original provision requiring the detailed and elaborate account of the work done on a client's behalf which is still the badge of all our tribe; but the "taxation" to which the bills are subject appears to have been enforced by the practice of the courts from the earliest times.

Any attorney who wilfully delayed his client's suit for his own gain, or demanded by his bill any other sums of money or allowance upon his account of any money which he had not laid out or disbursed, was to be discharged from being an attorney;[1] and with a humorous application of the law's fancy for imposing double or treble costs, the client was to have a right of

[1] A verdict for 1,500*l.* was obtained against an attorney in 1766 for delaying his client's cause: *Gentleman's Magazine*, xxxvi. 293.

action against the attorney or solicitor for costs and treble damages.

"And to avoid the infinite number of Solicitors and Attornies," it was provided that none should be admitted but those brought up in the courts or otherwise well practised in the soliciting of causes and proved by their dealings to be skilful and honest. But inasmuch as it was useless to limit the number of attorneys and restrict their practice, if persons not subject to the restraints imposed on them were allowed to do their work, it was enacted that no attorney should permit any other person to bring suit in his name under penalty of 20*l*. Upon the "unqualified person" a similar penalty was to be inflicted, and against him subsequently further provisions were to be directed, though, notwithstanding the dislike of the profession and the public, he still makes from time to time fitful appearances in the police courts. "The profession of the law," we are told,[1] "was not on the outside a very lucrative one at this period of our history. In most cases the fees received were very small in comparison with the work done. Every man in these days was, up to a certain point, his own lawyer; that is, he was well versed in all the technical forms of procedure. Therefore counsel were brought into very close relations with their somewhat exacting clients, by whom they might be said to be chiefly instructed, the solicitors being rather in the

[1] "Society in the Elizabethan Age." By Hubert Hall, 1887, p. 141.

position of an agent for the general conduct of cases." The specimens of costs given by Mr. Hall certainly substantiate his view that fees were small, and the attorneys' bills still consisted mainly of payments to counsel and the courts. For entering an appearance the fee was generally sixpence, but for an appearance in the Court of Wards, 2*s.* 4*d.*; for entering a cause for hearing, twelve pence; for "engrossing interrogatories" in one case, four pence; but to the ushers fees of ten and twenty shillings were paid; to the bailiff for service of a writ, 20*s.*; to counsel for pleading, sometimes 3*s.* 4*d.*, at others 10*s.* The court fees for writs varied. "For a writ out of the King's Bench called Alattadary (a latitat) 5*s.* 1*d.*," but "for a wryt out of the Excheker 15*s.* 10*d.*" On proving a will the charges were on a more liberal scale.

	£	*s.*	*d.*
"Engrossing 2 Inventories		13	4
Counsell's advice	1	0	0
Ingrossing Quietus	1	10	0
Solicitor's charges in three ridings up and down about the expedition thereof ...	5	0	0
	8	3	4"

Other bills of the same date exist:—

"*Hopkyns* versus *Robyns*.[1]

Michaelmas Term, 8 & 9 Eliz.

	s.	*d.*
For putting on the postea	2	0
For entering Judgement	4	4

[1] Notes and Queries, 2nd Series, Vol. xii. p. 355.

	s.	d.
Paid to the Clerk who entered the same Judgement with the postea	0	16
Paid to the Secondary of the Office for carrying the Record to the Treasury for examination ...	0	12
For the exemplification of the whole matter with the Judgement thereof	18	0"

The costs in Chancery were apparently less clearly defined; the court fees were there the chief consideration. Lord Bacon, in his speech on taking his seat in the court, promised to check these, and to take "a diligent survey of the copies" (which were made by the Officials and paid for, so much a sheet) "that they have their just number of lines and without open or wasteful writing." But, he added, "as for lawyer's fees, I must leave that to the conscience and merit of the lawyer, and the estimation and gratitude of the client."

A Chancellor following Lord Bacon complained that the Masters "sometymes by way of inducement fill a leaf or two at the beginning of their Reports and sometymes more with a long and particular recital of the severall points of the order of reference," and it was long before the costs of copies in Chancery ceased to be the cause of complaints. But as regards costs the court could on occasion be merciful. In 1575 the action of *Danyell* v. *Jackson* had been dismissed with thirty shillings costs, a sum which does not seem excessive; but plaintiff being "a veary poore boye in very simple clothes and bare legged and under thage of xij yeres" the court ordered him to be discharged, shrewdly

requiring an affidavit that he was the same Laurence Daniell as was named plaintiff in the suit.[1]

In London, at least, the attorneys were supposed to be well paid. The limit of their fees to forty pence had doubtless been forgotten. Attorney Dodge and Attorney Pettifog in Webster's play[2] met their clients at the Three Tuns Tavern near the Guildhall, and one learns from the scene the popular opinion of the attorney's position. Mr. Pettifog was engaged on behalf of Compass, a sailor.

"*Compass.*—And what do you think of my suit, Sir?

Pettifog.—Why look you, Sir; the defendant was arrested first by Latitat in an action of trespass.

Compass.—And a lawyer told me it should have been an action of the case? . . . .

Pettifog.—Ay but your action of the case is in that point too ticklish. . . . .

Compass.—There's some comfort in that,—yet O your Attorneys in Guildhall have a fine time on't!

Lionel.—You are in effect both judge and jury yourselves.

Compass.—And how you will laugh at your clients when you sit in a tavern and call them coxcombs and whip up a Case as a barber trims his customers on Christmas Eve, a snip, a wipe, and away!

Pettifog.—That's ordinary, Sir; you shall have the like at a nisi prius.

Enter First Client.

O, you are welcome, Sir.

First Client.—Sir, you'll be mindful of my suit?

Pettifog.—As I am religious: I'll drink to you.

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[1] Sanders' Orders of the High Court of Chancery, I. 54.

[2] "A Cure for a Cuckold."

First Client.—I thank you. By your favour, mistress, I have much business, and cannot stay; but there's money for a quart of wine.

Compass.—By no means——

First Client.—I have said, Sir. [*Exit.*

Pettifog.—He's my client, Sir, and he must pay. This is my tribute; custom is not more truly paid in the Sound of Denmark.

Enter SECOND CLIENT.

Second Client.—Good Sir, be careful of my business.

Pettifog.—Your declaration's drawn, Sir; I'll drink to you.

Second Client.—I cannot drink this morning; but there's money for a pottle of wine.

Pettifog.—O, good Sir.

Second Client.—I have done, Sir. Morrow, gentlemen. [*Exit.*

Compass.—We shall drink good cheap, Master Pettifog.

Pettifog.—An' we sate here long you'd say so. I have sate here in this tavern, but one half hour, drunk but three pints of wine, and what with the offerings of my clients in that short time I have got nine shillings clear, and paid all the reckoning.

Lionel.—Almost a Counsellor's fee.

Pettifog.—And a great one as the world goes in Guildhall; for now our young Clerks share wi' 'em to help 'em to clients.[1]

It was not only counsel who were willing to give some consideration to persons who introduced business, if the dramatists are to be trusted. Middleton (who married the daughter of a Six Clerk in Chancery[2] and

[1] Act I. sc. I.

[2] The Six Clerks obtained leave to marry by 14 & 15 Hen. VIII. c. 8. Originally these privileged attorneys had to obtain an order of the Master of the Rolls (whose liveries they wore) to marry or even to leave town.

had opportunity for special knowledge of the profession) makes Tangle, the furious litigant consulted by the men of his country side, say: "Another special trick I have, no body must know it, which is to prefer most of those men to one attorney whom I affect best; to answer which kindness of mine, he will sweat the better in my cause, and to them the less good; take't of my word I helped my attorney to more clients the last term than he will despatch all his lifetime; I did it." To this Phœnix replies, with what might have been professional feeling, "What a noble memorable deed was there!"[1] Two of Tangle's cases came on for hearing; as he is hurrying to the court some of his countrymen come to their pseudo-attorney for advice, and beseech him to listen to them. "Beseech not me," he replies, "bespeech not me; I am a mortal man, a Client as you are." His cases are lost, and he rushes despairing from the court crying, "Hear me; do but hear me! I pronounce a terrible horrible curse upon you all and wish you to my attorney."

Beaumont and Fletcher bear like witness. Good fees begat good causes; he who gave good fees to lawyers might choose any man's lands; they were his. He must get good witnesses "substantial fearless souls that will swear suddenly that will swear anything." For variety they might swear the truth, but otherwise

[1] "The Phœnix," Act III. The practice seems to have been well known. In "The Devil's Law Case," Sanitonella says of another counsellor that "he was wont to give young Clerks half fees to help him to Clients": IV. i.

truth was of little importance.[1] Webster found lawyers and tradesmen unduly prosperous.

> "Those lands that were the Clients are now become
> The lawyer's, and those tenements that were
> The country gentleman's are now grown
> To be his tailor's."[2]

So the attorneys lived gloriously, and if they died it was of grief "that the vacation was fourteen weeks long."[3]

Seen from inside the profession, the prospect was less alluring. To William West "of the Inner Temple, Attorney at the Common Law," it seemed that attorneys were not excessively rewarded in cash, and very ungenerously treated by their clients in personal regard. He proposed, he said,[4]—

"By God's permission to discourse at large in a peculier Treatise which wee have in hand, of the Office of Atturnies generally, but especially of Atturnies at the Common Law, men verie honest and learned, yea: And also very necessarie for the practice of the common Lawes of this Realme, and finishing of other civill business: Insomuch that by no meanes their labor and service may want. And yet such is the unthankfulnes of thys age that even their owne clyents (of whom they have best deserved) when they have served their turnes, so that they see no present occasion to use them any longer for the fault of some

[1] "The Spanish Curate" (1647), III. i.
[2] "The Devil's Law Case" (1623), I. ii.
[3] Middleton, "Michaelmas Term" (1607).
[4] In his "Symbolœographia, Which may be termed The Art, Description, or Image of Instruments, Covenants, Contracts, etc., or, the Notarie or Scrivener: Collected and disposed by William West of the Inner Temple Gentleman Attorney at the Common law in Fower severall Bookes. Imprinted at London in Fleet Streat within Temple Barre at the signe of the Hand and Starre by Richard Tothill, 1590."

few will uneth[1] afford the best of them one good woord for many good deedes, nay which is worse, they will generally slander and condempne them all as covetous persons and disturbers of the common peace and quietnesse of all men by unnecessarie suites.

"Where in verie trueth the most part of the said Atturnies being verie peaceable, do oftentymes disswade their Clyents from the same so much as they can, by means whereof they greatly offend their quiet mindes in so much that they will for that onely cause suspect them of affection towardes thadverse parties, and threaten earnestly that if they will not intermedle therewith others shall."

Unfortunately, though West's edition of Littleton's Tenures was five times reprinted, and his *Symbolœographia* seems to have become a classic in the scanty libraries of sixteenth century practitioners, one cannot find that his peculiar treatise on attorneys was ever published, and the profession lacks what was doubtless an able and spirited defence. If the complaints against attorneys have been constant, protests made by the attorneys such as William West's, have been not less constant against the treatment they have received.

The bags which all lawyers are still popularly supposed to carry made their appearance on the Elizabethan stage. They were, it seems, not the green cloth bags which afterwards became a synonym for attorneydom, but of black buckram. Leandro, in "The Spanish Curate,"[2] laments that he was not brought up to be a lawyer's ass, to carry books and buckrams. So common

[1] With difficulty, hardly. [2] IV. vii.

was their use that "a buckram" meant a lawyer's bag and sometimes the lawyer himself, or his clerk. La Writ, the little French lawyer of Beaumont and Fletcher, plunged unexpectedly in a duel, swung his bag in front of him as a second line of defence. And in "The Devil's Law Case"[1] a further reference occurs. The testimony of a waiting woman was proffered by Contilupo: "Where is she?" asked the Judge—

"*Contilupo.*—Where is our Solicitor—
With the waiting woman?
Ariosto.— Room for the *bag and baggage*."

It was equipped, then, with a black buckram bag containing his papers that the attorney of those times sought the inn where he met his clients, or the court where his cases were to be heard.[2] The bags also contained, it seems, the refreshments necessary for the day. Sandwiches were not then invented, and "puddings" (*i.e.*, sausages) were the favourite portable food. "Bid

[1] IV. i.

[2] Subsequently the bags carried by attorneys were green, and were so universally known that "a green bag" meant a lawyer of the inferior branch. You will carry a green bag yourself, rather than we shall make an end of our law suit," said Mrs. Bull, in "Law is a Bottomless Pit." The green bag has of late quite disappeared, superseded by the leather brief, or hand bag, black or brown, though Sir George Stephen spoke fifty years ago of a solicitor carrying his papers in a blue one. The red and blue bags which are now seen near the courts are peculiar to the bar. At one time red, purple, or blue bags were the special privilege of the Q.C.'s, the Chancery lawyers and the leaders of the Common Law Bar (*Law Journal*, 3rd May, 1872). According to the modern mysteries of bar etiquette all Q.C.'s bags are red. A Junior at first uses a blue one, and this must be carried by his clerk; but upon his conducting a cause with distinction he may be presented by his leader with one of red, and this he may carry himself (*The Green Bag*, Sept. 1895).

my wife send me some puddings," said La Writ, "I have a cause to run through requires puddings; Puddings enough." The clerk in charge of the waiting woman, too, had provided himself for the adjournment of the Court.

"*Sanitonella.*—I have a modicum in my buckram bag
To stop your stomach.
Waiting Woman. Pray what is't?
Sanitonella. Look you.
It is a very lovely pudding—pie,
Which we clerks find great relief in."

Unpopular as the attorneys may have been outside, within the courts they had established various privileges. Parliament itself so early as 1367 had released Johan de Codryngton "an apprentiz de la Court notre Seigneur le Roy et attourne" from service as a soldier, since to remove him from the courts would work the disinheriting of his clients and his own undoing.[1] The courts had extended the exemption. "It is the custom and priviledge of the Court, time whereof, &c., That neither the Attorneys nor Clerks of the Court shall be pressed for Souldiers, nor elected to any other office *sine voluntate sua* but ought to attend the service of the Court."[2] They could not be forced to be overseers or churchwardens,[3] and a fortunate attorney, named Prowse, who had acquired seven houses in Taunton, was held free from the duty of being tithingman, which the ownership

[1] Rot. Parl. II. 96.
[2] *George Venables' case*, Cro. Car. 11.
[3] This privilege still exists.

of property there generally involved.[1] The attorneys could be sued only in the court of which they were officers and had some technical privileges. When an attorney in 1455 was assaulted at Westminster and imprisoned in the palace there, "a Bill was entered in the Common Pleas for this offence; *a venire Facias* was awarded to the Warden of the Fleet to return *de Aula West*, 24 to appear before the said Justices to consider certain Articles to be proposed to them; the Warden of the *Fleet* returns 24 Attornies who find the bill true. A *Capias* was awarded against the offender."[2]

The courts endeavoured at the same time to establish a high standard of duty for attorneys and to repress unfairness. "If the client in any plea furnishes his Attorney with a plea which the Attorney finds to be false, so that he can't plead it for the Sake of his Conscience, the Attorney may plead in this case *Quod non fuit veraciter informatus* and in so Doing he does his Duty."[3] And so late as 1797 this maxim, which runs clean contrary, one would think, to the true doctrine of advocacy, was approved and restated: "the office of a pleader is not to make a case, but to state it fairly according to his instructions."[4]

It was doubtless because of the attorneys' special subjection to the rule of the courts that they never became a guild, an "art and mystery," as did members

[1] Cro. Car. p. 74.
[2] Jenkin's Reports, p. 111.
[3] Jenkin's Reports, p. 52.
[4] *Wallis* v. *Duke of Portland*, 3 Ves. 501.

of other crafts. The Inns of Court with their *apprentitii* supplied the place of a trade guild for the regulation of the bar. But the judges, possessing powers of regulation and punishment more drastic, proved, as regards attorneys, an inefficient substitute for the corporations which regulated trades. It was not until the apprenticeship system was losing its legal powers that the law enforced apprenticeship of attorneys; it was only when the associations or guilds for regulating trades were dying that the attorneys became associated. Their history might have been different, the great improvements effected in the eighteenth and nineteenth centuries might have come two hundred years before, if, upon the severance of attorneys from all connection with the Inns of Court, there had been a law society in existence. But if the control of the judges failed it was not for want of severity. If the attorney departed from the proper course of conduct, there was but one punishment —he was struck off the rolls. This severe sentence—the deprivation of the attorney's means of livelihood—was but lightly regarded. If the attorney merely neglected to appear to a writ where he was himself defendant, the plaintiff might sign a *forejudger* by which he was struck off the rolls. But in such cases, on making amends to the plaintiff, he might be restored to his position. But where the attorney offended more seriously there was no such *locus penitentiæ*. From a case in 1584[1] we

[1] *Byrchley's case*, Jenkin's Reports, p. 262.

learn that the method of striking off the rolls had already been elaborated. An attorney brought an action for "slanderous words," which accused him of dealing on both sides and deceiving many, and the court explained what would happen to the attorney if such words were true. Three years later the punishment which has already been quoted was inflicted on the luckless Osbaston.[1] In *Jerome's case*,[2] a variation was introduced; the attorney had evaded payment of some fees on writs, and thus incurred the full penalty. He was, indeed, thrown over the spiked bar and struck out of the roll, but no fine was imposed, *quia pauper;* but in compensation he was committed to the Fleet.

Of "The Seven Deadly Sins of London" (1606), "shaving," or cheating, was one; and when the Chariot of "Shaving" appeared, it was attended by "two pettifoggers that have been turned over the barre," drawn by an informer, and accompanied by "Wit, Audacity, Skeldring Soldiers and begging Schollers." Begging, then, was so unpardonable an offence, and wit probably so unprofitable, that the attorneys could hardly have kept worse company. "The Shaving of Poore Clients, especially by Atturneyes Clearkes of ye Courts" was "done by writing their Billes of Costs upon Cheverell."[3] In the London Courts the attorneys

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[1] See p. 43.

[2] Cro. Car. p. 74.

[3] Dekker, "The Seven Deadly Sins of London," p. 40, Arber's Edition. The allusion is perhaps to the great capacity of cheverel for stretching.

seem to have been subject to special perils. In January, 1610, Sir John Jolls, Knight and Alderman, complained that, when sitting in the Court of Requests, he saw Mr. Hutton, an attorney of the Sheriff's Court to whom he wished to speak, and sent a beadle to fetch him. But Mr. Hutton questioned the right of the Alderman to summon him in that peremptory fashion and declined to go. For this contumacy he was promptly ejected from his monopoly office of Attorney to the Sheriff's Court.[1] The Court of Star Chamber itself did not neglect, among its multifarious tasks, the duty of maintaining a proper standard of professional conduct. Three whole days were devoted by a court which comprised the Lord Keeper, the Lord Privy Seal, the Archbishop of York, the Earl of Danby, and two Chief Justices, to the charges made against James Casen, an attorney of the King's Bench, in which it is to be noted the King's attorney was prosecutor.[2] The allegations, which extended over several years, were numerous enough to call for long investigation; the attorney, it was said, had altered warrants, had brought actions without authority, had refused money tendered and brought actions for the debts, had sued for the same sum in two courts at once, had amerced the sheriff unduly, had lent money and practised the usurer's trick of making part of the loan in worthless goods, and,

[1] The Laws, Customs and Priviledges of the City of London. 1702.
[2] Reports of Cases in the Court of Star Chamber and High Commission (Camden Society), 1886.

most serious of all, had spoken disrespectfully to a serjeant-at-law. Most of the charges failed, but of three he was convicted, and worst of these, in the eyes of the court, was the attorney's protest against the serjeant, with whom he was involved in litigation, sitting as judge in a case in which the attorney appeared. "You are not a fit man to be a judge in this Cause," he had said, "you are partial"; and this, to the court, seemed worse than bringing a multiplicity of suits. He was not, consequently, of good fame, the court held, which the Statute of Hen. II. required attorneys to be. He was to be "put over the bar and fined 1,000 marks." If there had been no more unpopular judgments in the Star Chamber, it might have been sitting now; but the attorney may have thought one argument was unfairly urged against him. During the trial "a nest of young rattes or mice came from behind the King's Armes and ranne about upon the plaister or beames till three or four of them fell down upon the Court." In this, the Archbishop said, in giving judgment, he observed "the finger of God, in that he pointed out to the Court, as it were, that as there was a nest of vermin discovered, soe that this man and such as he were worse than Vermine."

It was perhaps mindful of such cases that in one of the earliest guides to the practice of the court, the gentle reader was invited to "distinguish and set apart the unlearned and unconscionable crue from those whose endowments of acquisition and indeerements of

Conscience and innated composition speakes them farre more worthy." Law books were then fortunately few, and none can have been of greater value to the practitioner than this work of Thomas Powell. "The Attorneys' Academy," "printed for Benjamin Fisher and are to be sold at his shop in Aldersgate Street at the Signe of the Talbot, and intended for the publike benefit of all his Majesty's servants," appeared in 1623, and a third enlarged edition in 1630. The lengthy sub-title indicates its contents. "The manner and Forme of proceeding Practically upon any Suite plaint or action whatsoever in any Court of Record whatsoever within this Kingdome. Especially in the *great Courts of Westminster*, to whose motion all other Courts of Law or Equitie, as well those of the two Provinciall Counsailes, Those of Guild Hall, *London;* as *Those of like Cities and Townes Corporate* and all other of Record are diurnally moved. With the Moderne and most usual Fees of the Officers and Ministers of such Courts." The practices of the Chancery Court and the Court of Common Pleas are treated at considerable length; the Star Chamber, the Exchequer and the King's Bench at less length, while the inferior courts (except the Marshalsea or Vierge Court) were very briefly dismissed. Of the attorney himself, as distinguished from his practice, the author said little. We learn incidentally that the great twin brethren of the race were then known as J. Doo and Rich. Roo. The value of

such a book to contemporary practitioners can hardly be exaggerated. The young attorney especially must have rejoiced in a guide which relieved him from the task of searching for authorities as to practice scattered over reports mainly concerned with the substantive law, and from reliance on the not always correct information obtained by inquiry at the offices of the court. That the book was well known is evident from its appearance in the portrait of the typical attorney prefixed to *Ignoramus*. The most interesting part of the book to the modern reader is the "Epistle dedicatorie" which is in verse. An edition of *The Annual Practice*, with introductory rhymes by the registrars and a sonnet or two from the bench, would now be a pleasing innovation. Mr. Powell honoured the Bishop of Lincoln, the Lord Keeper, with thirty-six lines, and Lord Bacon with six. The author protested he had done nothing to offend—

> "Nor sought to rob the Sea God's bed of Corall,
> I mean Lawes mysteries (for that's the Moral)."

A friend, "T. N.," also rhymed "in commendation of this booke," but one couplet sufficed.

> "'Tis good, 'tis common good, what would you more?
> It will be more good when there is more store."

He spoke prophetically. The modern "store" of rules and orders is most ample, and only by guides more than common good can the practitioner find his way through the mazes of modern procedure. "The conclusion" to the book, stated with all the emphasis

of italics, was a grievance from part of which, the occasional absence of counsel, solicitors and their clients still suffer. "I conclude," said Mr. Powell, "with this humble request made to those who have Power of Reformation in this crying reigning evill amongst Lawyers, touching the disappointment and defeat of Clyents Causes for which they [counsel] are retained and Fee'd and yet often fayle to give attendance in the houre of Tribulation or to be neare unto the Clyent in the day of visitation (a foule fault in a friend but worse in a servant). It may therefore please those in Authoritie to give the abuse this proper redresse; (viz.) That if any one of them take his Fee to be of Counsaile and to attend at such a certain time and place and shall notwithstanding fayle: The partie who so Fee'd him upon complaint to the Judge before whom he was fee'd to be, may have his Fee returned again with, such Dammage as hee shall make appeare to the said Judge that he hath sustained by the absence of such Counsaile. And that in case it shall be proved that hee absented himself in favor of the adverse party hee may be forejudged his practice and receive some other fitting and exemplary punishment in that behalfe."

The suggestion of bribery of counsel is now never heard, but attorneys still, as Sidney Smith said, "expect in lawyers the constancy of the turtle-dove," and are sometimes disappointed. But in excuse for occasional failure of counsel to appear, it must be admitted that the time at which a cause is to be tried is from the

modern practice of the courts never certain. On unavoidable absence, too, the fee is often returned; but when the grievance does occur, it is still lamented in terms which recall the bitterness expressed in this book, the first which ever burst into the sea of the practice of the courts.

The history of attorneys has rarely been affected by political troubles, though it was Robert Aske, an Attorney and Fellow of Gray's Inn, who led the rebellion called the Pilgrimage of Grace. But under James I. in 1605, it was thought necessary to provide that recusants, who refused to acknowledge the King's supremacy or attend Divine Service, should not be allowed to practise as attorneys. It is indirectly to King James' taste for theology that we owe our knowledge of the style of dress then usually adopted by attorneys. On the King's visit to Cambridge in 1615 so much theology was talked at a series of disputations and sermons that even his appetite was satiated, and his Majesty complained of tediosity. For diversion there was performed the play of *Ignoramus*, a satire on the practitioners of the common law, "so much decried by the Courtiers of the day." Ignoramus, the hero of the piece, the ridiculous pedant who makes love in the language of the law courts, was a barrister; but the artist who drew a portrait of Ignoramus for frontispiece to the published play chose to present him as an attorney. It was probably less dangerous to excite the attorneys' dislike than the hatred of the bar. The misapprehension was cor-

rected by the filial piety of John Sidney Hawkins, son of the eminent Sir John,[1] and from him we learn what little is to be known of the sumptuary regulations of the profession. "The Attorney as well as the barrister was anciently distinguished from persons of other professions by his dress, and indeed all trades and occupations were in the same manner known from each other; the merchant had one set of habit, the soldier another. . . . . In the dress of the practisers of the Common Law a like distinction was observed; the judge was dressed in one manner, the Serjeant-at-law in another, the barrister in a third, and the Attorney in a fourth. What was the ancient dress of the latter person may be seen from the cut before inserted in the Author's life, but at this day no trace of it is remaining among the rank of the profession."

In the cut, Ignoramus is pictured wearing a long gown, apparently made of a dark-coloured cloth, and rich in fur at the edges and the sleeves; and linen cuffs are turned back over the wrists.[2] Beneath this gown is a waistcoat from which an ink-horn hangs, and knickerbockers over which the stockings are rolled. The square-toed shoes are decorated with rosettes. A large

[1] Ignoramus, Comedia, scriptore Georgio Ruggle, A.M. . . . . accurante Johanne Sidneio Hawkins, A.M., 1787.

[2] The Barrister's gown now used, Hawkins said, was not the true ancient gown of the bar. *That* was probably of cloth, and undoubtedly faced with black velvet, and had on it tufts of silk down the facings and on the front of the arms. The present gown, he added, was originally adopted as mourning on the death of Queen Mary, and being found more convenient, was adopted for permanent use.

cloth cap, ample in brim, and shaped like a sou'wester, completes the costume. A pen is stuck in the attorney's ear, and, more completely to indicate his calling, three or four books are on a shelf, which they share with rolls of parchment. The books are a volume of Statutes, "At. Academy," *i. e.*, The Attorney's Academy, and "W. Presidents," meaning West's Symbolœography, which first appeared in 1581 and was reprinted from time to time until 1632. Already the attorney was given over to the use of some sound form of words, but as yet his own profession, and not the bar, supplied the books of precedents and instruction that he required.

CHAPTER III.

THE ORIGIN OF SOLICITORS.

The mention of solicitors in the statute of 1605 calls attention to the growth of another class within the legal profession, destined, like Aaron's rod, to swallow all its rivals. The solicitors, who transacted in the equity court the work done by attorneys in the courts of common law, are not mentioned in the early books, and for a long period they were considered inferior in rank to the attorneys. They had no strictly defined legal position. Unlike the attorneys they could not bind their clients; they were not, like them, appointed "ad lucrandum vel perdendum." It is strange that while the legislature required the attorneys to be duly qualified and their names entered on the roll, it permitted another class of practitioners to grow up, of whom, like the attorneys of earlier days, it required no qualification, and over whom the courts could have exercised little control. But a precedent had been made in the common law courts. The attorneys, who could practise as such only in that court in which they were admitted, were allowed to represent their clients as "solicitors" in the other courts, though there they had

no legal status, and, it was said, only escaped the penalties of maintenance by being of inferior rank to their clients.[1] In the Court of Chancery the Six Clerks were the only attorneys. In this court, at least, the law had enforced its favourite plan of limiting the number of practitioners; and when the business of the court was small the six might have given some personal attention to the suitors' interests. But by the seventeenth century the work had enormously increased. Even under the Tudors the volume of litigation had been very great.[2] "The business of that court," said Roger North writing of his own time, "is more, and of greater value than that of other courts." The fees, he adds, were larger, but "with officers and fees proper for a little business such as the judiciary part anciently was," it had come "to possess almost all the business of the nation." The Six Clerks had long since found it necessary to appoint other clerks to assist them; and to them they had abandoned the personal conduct of causes. For their fees the six looked to the under-clerks, who in turn looked for remuneration to the client, with whom they alone, apparently, now came into contact. In 1596 it had been found necessary to recognise these assistant clerks as officers of the court, and to regulate their duties. No Six Clerk was to have more than eight clerks under him, but the number being found insufficient was increased to nine, and afterwards to ten.

[1] *Thursby* v. *Warren*, Cro. Car. p. 159.
[2] Social England, III. 382.

These in turn had a number of subordinates, and all were eager for fees. Personal attention by the six attorneys of the court to the suitors' interests was impossible. They had been ordered not to leave the direction of litigation to the under clerks, but the energies of even these were concentrated upon quarrels with their superiors. "For what signify the Six Clerks," asked Roger North, "but to keep check upon the number of sheets, that they may reckon strictly with the under-clerks, and not be imposed on as to their dues by them?" Causes were retarded or advanced for bribes; without a bribe it was scarcely possible to get an order drawn up by the registrars. The bribe for expedition in passing an order, said North, "is an article in the solicitor's bill as much of course as the fee for the order." Indeed, so unusual was expedition, even when paid for, that Mr. Bradley, a solicitor, finding an order against his client expedited, felt justified in knocking off the hat of the clerk in the registrar's office, and beating him over the head: whereupon he was committed to the Fleet, a close prisoner without pen or ink, or access from without.[1] Practice in the judge's chambers in Chancery lacked the decent decorum of modern times. Not long after complaint was made that the younger clerks employed there threw "dirt, filth, muck, and many other things," made loud outcries and rude and violent clapping of their desks;

[1] Sanders, Orders of the High Court of Chancery, I. 347.

and the Chancellor felt it necessary to threaten to send the offenders to the Bridewell. A few years later he had to order the under-clerks not to wear swords, nor their hats in the offices of the court; not to break windows or seats, not to throw stones, not to make rude or indecent noises, and not to shut up the offices in the midst of the usual times of business.[1] With defects so flagrant in the offices of the court the reader is not surprised that it was upon the official "clerks and ministers" and not upon solicitors that Lord Bacon's strictures were made. In the "Life of Lord Guildford," Roger North says, "I have heard Sir John Churchill, a famous Chancery practiser, say, that in his walk from Lincoln's Inn to Temple Bar . . . he had taken 28*l.* with breviates only for motions and defences for hastening and retarding hearings,"—and this when the fee for motions was but a guinea or half a guinea.

In such conditions it was inevitable that a class of men should grow up whose business and care it was to conduct, expedite, and "solicit" causes. This the solicitors did, the attorneys ranking equally in such matters with persons of no legal acquirements or status. These solicitors were often what the earliest attorneys had been, of a domestic nature, the private servants of great men. But by 1605 the common solicitors, ready to urge in Chancery the cause of any who employed them, were numerous enough to share with attorneys the animadversions of Parliament and others.

[1] Sanders, Orders of the High Court of Chancery, I. 398.

In the Court of Star Chamber the course of events had been the same. There, too, the number of attorneys of the Court was limited. There were at first but two, one for the plaintiff and one for the defendant, which Hudson, the historian,[1] thought was "assuredly most for the ease and dignity of the court." The arrangement was probably less to the ease of the litigants, for a third was appointed "upon a suggestion that it were fit the suitor might have election of choice"; and afterwards even a fourth was added, which, said Hudson, "surely was most unnecessary." The clients, on the other hand, were not satisfied even with such amplitude of choice as this, and perversely preferred to employ private agents bound to them by the "cash nexus" and a common interest. "In our age," the historian of the Star Chamber continued, "there are stepped up a new sort of people called *solicitors*, unknown to the records of the law, who, like the grasshoppers in Egypt, devour the whole land; and these I dare say were express maintainers and could not justify their maintenance upon any action brought.[2] I mean not where a lord or gentleman employed his servant to solicit his cause, for he may justify his doing thereof; but I mean those

[1] William Hudson was a barrister practising in the Star Chamber, who died in 1635, leaving a manuscript "Treatise of the Court of Star Chamber," which was printed in 1792 by Hargrave in "Collectanea Juridica."

[2] In *Doe* d. *Bennett* v. *Hale* (15 Q. B. 171; 19 L. J., N. S., Q. B. 353), Erle, J., suggested that counsel also, before they constituted a professional class, and were still merely friends of the parties, perhaps only escaped the penalties of maintenance by being paid for their services.

which are common solicitors of causes, and set up a new profession, not being allowed in any court, or at least not in this court where they follow causes. And these are the retainers of causes and devourers of men's estates by contention and prolonging suits to make them without end." But the existence of solicitors seems to have been recognized in the time of Elizabeth.[1] In 1635, the Six Clerks in Chancery were enjoined, by order, to inform themselves continually of the state and proceeding of their clients' causes, whereby they might be able to defend their clients, and to give account to the court, as the attorneys in all other courts did, and not leave the care and knowledge thereof upon their under clerks. In 1647, the Six were again declared the only and proper attorneys of the court. But these were only ineffectual struggles against the inevitable growth of solicitors, the last efforts to maintain a system which had become impossible. Litigants keenly interested in their suits would certainly intrust them not to indifferent officials, but to agents whose interest was to serve their principals. By the reign of Charles II. the solicitors had become so numerous and so well recognised a class, that a professional opinion had grown up among them, a sense of pride in competent workmanship, and with it a consciousness that there were already too many men in the profession. In the preface to *The Compleat Solicitor* (1668) we read:—

[1] Pulling, Law of Attorneys, 1849, p. 23.

"It is a very easie matter to seem to solicite; but a Work of no small difficulty for any one to acquire himself to be *re vera* an expert and judicious Sollicitor; not *nomine tantum* not *Superficially* and Historically to bear the name of a Sollicitor; there have been (if there are not) too many of them; and if not more than are good, I doubt not more than needs. It is not enough for the Sollicitor to be as it were the Loader to the Attorney, or the Intelligencer to the Client; but to be experienced in the Rules Practice and Proceedings of the Court where his cause depends."

To a later edition (1683) was added a new preface angrily repudiating the assumed superiority of the attorney.

"To manage Causes both in Equity and at Common Law with Skill and Exactness will require the Genius and Qualification of a Compleat Solicitor, who should be a person not only reasonably well grounded in the Common Statute Laws of this Kingdom, but according to the Rules here laid down, and Instructions given, be well acquainted with the practice of almost every particular court in *England*.

"We give Preheminence (not unadvisedly) to the Solicitor thus qualified as the *Genus* wherein the *Species* Clerk and Attorney are comprehended. For though the Attorney, in that Court wherein he is sworn, be by the Rules of the Court, the chief person interested in the practice thereof, yet whatever Business else he Transacts in any other Court but his own, he is no more than a Solicitor; nor can he (as appears by precedents in all ages) otherwise than as a Solicitor bring an action for his Fees and Disbursements in those Courts whereof he is not a sworn Attorney.

"Besides to speak Transiently of the Regulation of our Solicitor, that he may not appear Inferiour to the Attorney, Know that there have been worthy Gentlemen in all Ages, both under and at the Bar, who have thought it no more Disparagement to Solicite Causes in Chancery and other Courts, than for

those Great Sages of the Law, the Lord chief Justice *Dyer*, the Lord *Coke*, Sir *William Wylde*, Sir *William Jones*, &c. (as Tradition tells us) to have been every one of them in his time Educated as Clerk to an Attorney of the Common Pleas.

"We are very sensible how some Attorneys at this day do Abominate the Name of a Solicitor, and have seen some expressions of Indignation towards them in a small Tract extant, by an ancient Clerk of the Common Pleas; and we could heartily wish with that worthy Gentleman, that the practice of that Court were kept inviolate as heretofore to the Entring-Clerks of the same, but since the Licentiousness of late times hath Introduced Disorder and Confusion not onely in the Law, but in Divinity and Physick, setting up a new Topick that [*Every man ought to make the best of a Bad Market*] we see no Reason (as the case stands) why a man of parts (though formerly against his Inclination perhaps, or by some cogent necessity put to a trade) may not as well set up for a Solicitor, as some persons (we could name, now in being) have done heretofore with good Success. For to be short, Industry is a great matter, and there is more in Providence than we are aware of."

Other moral precepts are added; patience and prudence are necessary and a calm content; and "a certain stayed and settled manner of living." The writer thoughtfully adds a table—

"*Of the qualities wherewith a Solicitor ought to be endued to make him Compleat.*

"First, he ought to have a good natural wit.

"Secondly, that wit must be refined by Education.

"Thirdly, that education must be perfected by learning and experience.

"Fourthly, and lest learning should too much elate him it must be balanced by discretion. And

"Fifthly, to manifest all those former parts, it is requisite that he have a voluble and free tongue to utter and declare his conceipts."

The writer, however, felt some misgivings both as to his advice to men of brisk parts bred to trade to turn solicitor, and to the general acceptance of his standard of moral and natural qualifications.

"But here I meet with an objection, *viz.*, *what need is there of all this coyl and ado about a Solicitor? Do not all men know that there are many Solicitors who have much practice and great dealing, that have never been bred to any of those things? Simple fellows who had not wit or honesty enough to learn a mean Trade, and in truth cannot write their own names and yet are accounted brave fellows in that business.*

"*Answ.* To this, I answer: True it is, and to the shame both of the Law and the Professors thereof be it spoken that will suffer such fellows by their ignorance and deceit to abuse so many as they daily do. 'Tis by the means of these cheating devouring Caterpillars, that the honourable Professors of the Law are so often cryed out upon for bribing and taking excessive Fees. . . . . Now every idle fellow whose prodigality and ill husbandry hath forced him out of his Trade or Employment takes upon him to be a Solicitor."

Even the attorneys could not have stated the objections more forcibly. For remedy of these ills the writer suggested the establishment of a Roll of Solicitors to be kept in the Petty Bag Office in Chancery, and that five years' membership of some Inn of Court or Chancery should be a requisite for admission as a solicitor. These remedies, it will be seen, had already been prescribed by Rules, still nominally in force, but forgotten in the social and political convulsions of the time. The statute of 1605 applied to both attorneys and solicitors, and henceforth the two classes, though for a time rivals, are but two branches of the same profession.

CHAPTER IV.

ATTORNEYS AND SOLICITORS UNTIL THE ACT OF 1729.

For a hundred and twenty years after the statute of Jas. I. attorneys and solicitors escaped further regulation by Parliament; but the silence of the legislators is redeemed by the freely-expressed opinions of their contemporaries. Bishop Earle[1] found the attorney "all for money." "All his skill is stuck in his girdle or in his office window"; "his ancient beginning was a blue coat, since a livery, and his hatching under a lawyer, whence though but penfeathered he has now nested for himself and with his hoarded pence purchased an office. . . . . His looks are very solicitous, importing much haste and despatch." This last was already an ancient taunt; Chaucer's man of law was made the subject of the same reproach. The author of Hudibras entertained no higher an opinion of the lawyers. Overbury's "Character of a Pettifogger" is even more caustic. "He promotes quarrels and in a long vacation his sport is to go a fishing with the penal statutes. He is a vestryman in his parish, and easily sets his neighbours at variance with the vicar, when his wicked counsel on

[1] In "Microcosmography," 1628.

both sides is like weapons put into men's hands by a fencer, by which they get blows, he money. . . . . His pen is the plough, and his parchment the soil, whence he reaps both corn and curses." But it would be unfair to apply this criticism of the pettifogger to the whole profession of attorneys, who have always complained that the character of the entire class has been popularly judged by the misdeeds of its worst members. Nor was contemporary vindication lacking. An anonymous writer found an honest lawyer to be "the best Life Guard of our Fortune, the best Collateral Security for an Estate, a trusty pilot to steer one through the dangerous (and oftentimes inevitable) ocean of contention; a true priest of justice, that neither sacrifices to fraud nor covetousness, and in this outdoes those of higher function."

Although Parliament was idle the courts found frequent occasion to issue rules for the further regulation of the profession. In 1616 an order was made at a meeting of all the judges that the number of attorneys in each court be viewed and drawn to a competent number; the superfluous ones were to be removed, respect being had that the most fit and skilful persons should remain. In 1633 a rule of the Common Pleas prescribed as a qualification for admission six years' service as clerk to an attorney, or in the alternative that the applicant's legal education should be approved by the judges. In 1654 a "rule of the Supreme Court of

Westminster ordained that none should be admitted an attorney unless he had served five years as a clerk to some Judge, Serjeant-at-Law, Barrister, Attorney, Clerk or other Officer of the Court; and who on examination should be found of good ability and honesty for such employment." The court was to appoint once in every year, twelve or more able and credible practisers to examine such persons as desired to be admitted. This was not the origin of the present system of examination; for inquiry into the embryo attorney's qualification had been required (though not enforced) since the Order of 1292. But as convenient times for examination were to be appointed, and persons desirous of being admitted were required to attend after giving proofs of service, there was now a tolerably close approach to the present system, while the examining body was that to which, more than two hundred years later, after long and vain reliance on the judges, a return was to be made.

At the same time, it was provided that common solicitors should not be admitted into practice unless they were attorneys of the court; but to this there was added the important qualification that the rule was not to extend to "the management of evidence at a trial, private solicitors, or to corporations, or to servants acting for their masters." But even with respect to common solicitors, as well as the attorneys, we are told,[1] this rule

[1] Cunningham, "The History and Antiquities of the Four Inns of Court . . . . extracted from Dugdale," 1780.

of 1654 was not enforced. "Attornies should likewise be examined by the judges with respect to their knowledge of the practice of the courts, &c. Nor is this ever done, because a judge considers every attorney he admits as a new client who may bring him business, and therefore his lordship is not severe respecting the attorney's knowledge, the want of which tends to increase the business of the judge's chambers." But this comment, written upwards of a hundred years later, may not have been true of the time when the reforming energy of the courts was fresh.

The attorneys of the Commonwealth were themselves law reformers, not less ardent and much better informed than their clients, though some of them had so far caught the martial spirit of the time as to offend Sir Matthew Hale by wearing swords. From a contemporary broadside sheet it appears that in 1649 the attorneys of the Common Pleas held a meeting and resolved on certain "heads of proposals" for reform, which, with reasons in support, were submitted to Parliament; and a further meeting was called, in somewhat ambiguous terms, for the following year. These resolutions were issued under a title of formidable length:—

"The Heads of Certain Proposals agreed upon to be Presented to the Parliament at the generall meeting of Attorneys in *Staple-Inne* Hall upon Friday the fifteenth day of February 1649. With the Heads of Certain other Proposals to be consulted upon at the next Generall Meeting there to be held upon Friday the 24th day of May 1650 at one aclock in the afternoon. Where all Attorneys and officers that wish well to the Reformation of

Proceedings at Law are desired to attend to put an end to that work; Whereby it is hoped that the Clyent will be much secured, the Creditor and Purchaser fully provided for, the charge of Suits greatly abated, and the Processe of Law much shortned, which is earnestly desired by the Proposers, *the Attorneys of the Court of Common Pleas*."

The reforms already recommended were twelve in number, of the unheroic, but radical and practical, nature proper to the professional reformer. Fines on original writs should be abolished; the tenant in tail should be empowered to sell; actions of ejectment should lie against the tenant, and the entry, lease and ouster be admitted; procedure should be more prompt. There is nothing here of the greed and chicane commonly attributed to the proposers. The further reforms suggested were equally valuable: actions of debt should lie for legacies; the remedy for recovery of judgment debts be made more easy; a tender of sufficient amends was to be a bar in all actions of trespass,—a valuable resource for stifling suits in the days when courageous litigants brought an action for every trifling wrong. One suggestion only was made directly affecting the profession, but that at least was drastic: "that every Attorney that shall disburse any more than the charges that shall happen in one Terme and Vacation for his client, shall not only be in the condition of an unlawfull maintayner of Suits, but also have no remedy to recover the same at Law." The intention was doubtless to prevent speculative suits by attorneys; but it is to be feared that clients would have supposed the object to

be less the prevention of maintenance than the prompt payment of attorneys' bills.

Sincere or not, these, like most of the great law reforms projected during the Commonwealth, remained only projects. The Court of Chancery, with its twenty-three thousand causes of from five to thirty years' continuance lying undetermined,[1] was, of course, the first of the courts to attract the reformers' energies, and the famous Ordinance of 1654 was, after much discussion, not, indeed, passed, but enforced. Counsel misinforming the court on any matter, contrary to or without instructions, was to be publicly reprehended and to pay forty shillings to the party injured, and twenty shillings to the use of the Lord Protector; while the attorney, solicitor or client misinstructing counsel on a matter of fact was to pay forty shillings or stand committed. By the same ordinance the Six Clerks were abolished and sixty attorneys appointed, who were to receive "the termly fee of 3*s.* 4*d.*, which formerly the six clerks received and no more."[2] Naturally enough disputes promptly arose between the six and the sixty, and an amusing comedy was performed; the clerks' seats and papers were taken away by night, injunctions were granted and dissolved, actions at law suggested, and the matter ultimately referred to Parliament which was too busy to attend to it. An attempt to fix the maximum fee of counsel at 5*l.* was unsuccessful. Not more

[1] Carlyle, Cromwell's Letters, III. 238.
[2] Sanders, Orders of the High Court of Chancery, I. 254.

happy was a proposal to reform the Common Pleas, the "common shop for justice." "It was proposed, and a Bill was drafted in 1655, to throw this Court open to all barristers *and attorneys*, giving to every qualified practitioner the same right to conduct cases there as he had in the Exchequer and the Upper Bench. The change was not popular, however, in Westminster Hall, and an unhappy attorney endeavouring to assert this inchoate right was laid hold of by the serjeants and thrown over the spiked iron bar, which divided their court from the floor of Westminster Hall, 'whereof we shall probably hear more,' said the daily paper. But nothing more was heard of the attorney, or indeed of the proposal, for just one hundred years."[1]

This notwithstanding, the Interregnum was a golden time for attorneys as well as counsel, a result little intended by ardent law reformers such as the Puritan party possessed. The good old days of the Plantagenets had come again "when every morning brought a noble chance." The Courts of Common Law and Chancery sat regularly, there were numerous State trials, and the Committees for Compounding with Delinquents and for the Advance of Money provided new and large fields of litigation. The attorneys and solicitors "grew in riches if not in honour. The Commonwealth squibs and tracts represent them as living with no less pomp and luxury

[1] The Interregnum (A.D. 1648—1660). Studies of the Commonwealth, Legislative, Social and Legal. By F. A. Inderwick, Q.C. London, 1891, p. 230.

than the Country Squires, and as amassing large fortunes which enabled their sons to purchase the lands of the impoverished gentry."[1] The city merchants, the usurers, the bar, had already seemed to reach this object of the landless successful man's ambition; it was now the attorneys' opportunity, as a century later it was to be the turn of the manufacturer and the returned Nabob. But it has to be remembered that the gains made by the practice of the law have always appeared greater to the client than to the lawyer. Probably very few attorneys became "county gentlemen" under Cromwell or Charles.

The hapless attorney thrown over the "spiked iron bar" exemplified in his own person a long strife concerning the relative functions of attorneys and counsel. Their relationships had been the subject of numerous Rules of Court. Originally, it is said, the attorney discharged only the humblest functions. He attended to the routine of procedure, while the direction and conduct of the litigation were under the control of the serjeants and apprentices, as according to the modern French practice the avocat advises the client and conducts the cause in court, while the avoué, acting under

[1] Jeaffreson, "A Book about Lawyers," II. 323. In one of the specimens of "Humour, Wit and Satire of the 17th Century," collected by Mr. John Ashton, 1883, is a "Catalogue of ladies to be set up for Auction." No. 12 in the list is "a Soliciter's Daughter, not streight but a good face" at the upset price or with a portion of 4,000*l.*, by much the highest figure in the particulars of sale. Cf. the modern case of the rich attorney's elderly ugly daughter, familiar *ex relatione* W. S. Gilbert.

his directions, transacts little more than the formal business of delivering the pleadings. "Councell," said Coke, "is taken of advice and direction, and that is to be had of three persons:—1. Of Servientes-ad-Legem (*i.e.*, the Serjeants). 2. Of Apprentices-at-law in pleading called Homines Consilarii, et in lege periti; and these officium ingenii. 3. Attorneys at law, that have Officium laboris in following the advice of the learned and despatching matters of course and experience." "For a long time," said Lord Campbell,[1] "the attorney only sued out process and did what was necessary in the offices of the Court for bringing the cause to trial and for having execution on the judgment." But this was no unimportant matter, since, even if the practice of the courts was not more complex than now, the rules of procedure were more strict, and the penalties for default and the consequences of a technical mistake were far more serious than modern custom permits. The common law, says Mr. Inderwick, "was technical almost beyond our conception."[2] But it is said that in the twelfth and thirteenth centuries there may have been a time when the apprentices and attorneys were identical, and the routine duties of procedure and the actual advocacy were discharged by the same persons. Johan de Codyngton, above mentioned,[3] was both attorney and apprentice; and Mr. Foss conjectures

[1] *Doe* d. *Bennett* v. *Hale*.
[2] The Interregnum, p. 219.
[3] p. 58.

that in the Order of 1292 the words *attornati* and *apprenticii* are used as synonymous. It may have been that the lower ranks of the *apprenticii*, in the words of *The Compleat Solicitor*, underpulled causes during the long term of study then necessary before the rank of utter barrister was attained. It is certain that attorneys were admitted (though possibly only as a matter of favour) to the Inns of Court where the *apprenticii* or junior barristers also received their education. In 1379, on the grant of a subsidy, there was made[1] an assessment of the legal profession classified as follows:—

	s.	*d.*
"Every Serjeant and great apprentice at law ...	40	0
Other apprentices who follow the law	20	0
Also all the other apprentices of less estate and attorneys	6	8."

The attorneys' admission to the Inns, apparently of long continuance, was abruptly discontinued by an Order dated 22nd June, 1557 (3 & 4 Ph. & M.).

"2. That none Attorney shall be admitted into any of the houses [*i. e.*, Inns of Court] and that in all admissions from henceforth this condition shall be implyed; that if he that shall be admitted practice any attorneyship, that then ipso facto to be dismissed and to have liberty to repair to the Inne of Chancery from whence he came, or to any other if he were of none before."

The Inns of Chancery were under the control of the Benchers of the Inns of Court, but had not, like them,

[1] Pulling, "Order of the Coif," p. 111.

the power of calling students to the bar. To these lesser Inns, then, attorneys were relegated, and with them they were long associated. The Order of 1557 was repeated in 1574 with added emphasis, but attorneys were allowed to attend the "mootings" or discussions of points of law, which were then, and long afterwards, considered among the most effectual methods of legal education. The accession of James I. brought no relaxation of the orders of Mary and Elizabeth. An "order of the 7th of November in the 12th year of the Reign of our Gracious Sovereign Lord King James and of Scotland the 48th" provided :—

"4. For that there ought alwaies to be preserved a difference between a councellor at law which is the principal person next unto Serjeants and Judges in the administration of Justice, and attourneys and Sollicitors which are but ministerial persons and of an inferior nature, therefore it is ordered that from henceforth no common attorney or Solicitor shall be admitted of any of the four houses of Court."

Some doubt may be permitted whether these orders were entirely effectual since they were so frequently repeated. The order of James I. was followed by one almost identical in terms, dated 15th April, 6 Car. I., where, instead of the term counsellor at law, there is the expression "Utter Barristers Readers in Court and Apprentices at law." The attorney seems not to have been allowed to remain in peace even in the Inns of Chancery, for the records of Barnard's Inn contain an order made in 1629 for "Mr. Harvey, late student of that house, to give up his chambers, as he practised

as an attorney." But, further, an order was made, dated 8th June, 16 Car. II., which repeated the provisions of those already mentioned, adding only an expression of superlative contempt for the attorneys. Under Mary, Elizabeth, and James the attorneys had been deemed inferior persons; they were now declared to be "immaterial."

In conflict, or at least in contrast, with these were Orders of 1654, 1677, 1684, and 1704. By the first it was ordered,

> "That all officers and attorneys of the Court be admitted of some Inns of Court or Chancery by the beginning of Hilary Term next, and in the same term wherein they are admitted officers or attorneys and be in the commons one week in every term."

They were further ordered to take chambers there and leave notice with the butler; and in 1677 and 1684 it was again ordered that the attorneys were to be of some Inn of Court or Chancery. In 1704 all the courts of common law ordered that—

> "All attorneys not already admitted into one of the Inns of Court or Chancery should procure themselves to be admitted, and that for the future no person should be sworn an attorney or admitted, unless first admitted of one of such Inns, and bring a certificate from the treasurer or principal of the Inn testifying such his admission."

The attorneys in the seventeenth century were still confined mainly to one of the three branches which at present constitute their practice. Conveyancing and the giving of advice were still in the hands of counsel—

the serjeants and the apprentices; litigation only was the function of the attorney. And of this only the formal part was in their hands. Counsel then, and long afterwards, saw the client personally "without the intervention of a solicitor"; advice was asked by the lay client, and the fee paid by him. Roger North's life of his brother Sir Francis North, Lord Guilford, gives much information concerning the customs of his time. Many instances are mentioned wherein North, like all counsel then, advised clients directly. He even did what one would have supposed especially fit for the attorney. "After this Mrs. Cuts came to his lordship in a very great concern, saying she had a very credible information that there was a foul rasure in Sir John Cuts's will. . . . . His lordship [*i.e.*, Sir F. North] immediately took coach and went to Doctors' Commons to view the original will. There he found the rasure most evident. . . . . Thereupon he took a paper, and made what they call a fac-simile of the marks and distances of those small specks as were not scraped out. Then his lordship called the officers and showed them the rasure and the marks." When briefed in a cause, "he examined carefully the issue as the pleadings derived it; and perused all the deeds if it were a title and not seldom examined the witnesses if it were a fact." In conveyancing matters, it was only when his practice grew too great that he left "searches, perusals and extract making" to others. Even the formal work left to the attorney was not all that in that branch of

his practice the modern solicitor or his clerk is called on to do. For a vast tribe of officials existed to prepare the process, enter the proceedings, make up the record, and so forth; judges' clerks, clerks to the *custos brevium*, clerks of the inrolments, clerks of the King's silver, clerks of the warrants, clerks of the essoyns, philizers, exigenters, curators, marshals, *cum multis aliis*. Yet the work of attorneys must have been regarded as not unimportant, since North mentions that credit was reflected on them by the success of a cause. Indeed, it was inevitable when the attorney, possessing some knowledge of law, was always at the client's elbow, that the client should at times resort to him for advice. In the country, especially, one would think, the attorney must have been the real adviser; counsel were far away in London, and to the attorney the would-be litigant must have gone for legal guidance. It is mentioned that when Francis North was on circuit the attorney and client, with their cause ready for trial, would discuss who should be their counsel; the preparations having apparently been made without assistance from the bar.

Indeed, soon after the Restoration, a change was being made in the practice. Roger North had heard from Serjeant Maynard that, in his time, attorneys merely abbreviated the pleadings by way of brief, counsel examined into the evidence before trial and did the rest; but that had changed. The prothonotary in his own time no longer made up the record; the attorneys brought the records already made up in "paper

books with the serjeant's hands." It was worth while, though doubtless unprofessional, for counsel to "hug" the attorneys so as to get business. Francis North, indeed, never did, "as many less qualified have done, bustle about town and obtrude themselves upon attorneys and perhaps bargain for business"; but Jeffreys, who was to succeed Lord Guilford upon the woolsack, came "into full business" by getting acquaintance with the city attorneys, "and drinking desperately with them,"[1] so that much of the patronage involved in the choice of counsel must have been in their hands. On matters of form and practice attorneys shared with junior counsel the right of audience by the judges[2] at the side-bar, which corresponded with the modern Judges' Chambers; or, as Roger North unkindly puts it in one place, the judges "heard them wrangle." When the serjeants one day refused to move in the Common Pleas, by way of protest against a supposed grievance, the Lord Chief Justice threatened to hear the attorneys; but the serjeants apologised and the attorneys remained silent. The difficulties in which attorneys were placed by the rule restricting them to practise in one court was overcome by using the names of attorneys in the other courts;[3] and in the Chancery Court especially, the practice must have been very loose. For when Francis North was still unqualified to practise, he "was contented to under-pull as they call it and

[1] Lives of the Norths, I. 273. [2] I. 132. [3] I. 131.

managed divers suits for his country friends" and relations. In particular, he managed a cause for his father and recovered 300*l.*; in this "he made use of Mr. Baker, a Solicitor in Chancery, who for his singular integrity was famous."[1] Mr. Baker, when the cause was won, proposed to pay to Francis North a proportion of the costs, "saying that it was their way and they were allowed at the offices somewhat for encouragement to them that brought business. By this we see what country and other attorneys get by Chancery suits"; and we see, also, the origin of the division of profits between country solicitors and London agents. It was not, however, till the beginning of the eighteenth century that these appointments were formally made, the country attorney until then "coming in every case to London to solicit his client's cause in person."[2] Solicitors' bills of costs were already very unpopular; they were "a bitter pill." The "practice of shamming a false bill," we are told, was very common; the bill in the case which Mr. Baker conducted was fair and reasonable, but "however moderately and husbandly the cause was managed," Lord North, the client, "thought the sum total a great deal too much for the lawyers." While Francis North was still a student, he

[1] Lives of the Norths, I. 31.

[2] Pulling on Attorneys (1862), p. 444. It was doubtless the differentiation of the annual duty on London and country solicitors in 1785 that made the appointment of London agents universal, for the country solicitor could not after that practise in the superior courts without paying the higher duty and having a London address.

was appointed to keep the courts of his father and his father's friends, although the custom had elsewhere arisen for the lord or his steward "to take a share of the profits and make some attorney a kind of substitute to do all the business." Here Francis North had to match his wits against those of the tenants, and use all his art to get the proper fines and fees. It is easy to see that what seemed to the countrymen in the lord's son merely unexpected shrewdness, would, in the attorney, be denounced as rank oppression and extortion. In the local courts of the time the practice was loose and uncertain; in London, the especial remedies of the King's Bench gave that court almost a monopoly of the business, but the country attorneys, one learns, were mostly attached to the Common Pleas.

In his "Discourse on the Study of the Laws," written towards the close of his long life, Roger North said:[1]

"It is a vulgar observation that the attorneys get ground of the long-robe, as it is called, the reason of which is the gown has derelicted the practice of forms, so that all is now left to them; and such as profess only to afford a little discourse and take money, shall not be applied to, but for necessity, when their advice is wanted; and it is not one business of a thousand that comes to them; the former part is nearer the client than counsel. . . . . But the abatement of such industry and exactness [as counsel formerly showed] with a laziness also, or rather superciliousness, whereby the practice of law forms is slighted by Counsel, the business of course falls to the attorneys."

[1] pp. 39, 40.

In his Autobiography[1] he refers to the same matter in slightly different phrases.

"Anciently, as I have been informed, all conveyancing, court-keeping, and even the making of breviats[2] at the assizes was done by the lawyers. Now the attorneys have the greatest share, and the young practisers, I might say old ones too, truckle to them, and men of law expect business to come from their hand, and the attorneys depend little on the others. The truth is the gentlemen of the law, having left the mechanic part of their practice, that is to speak with the client at the first instance, to state his business and to advise the action, and not griping for fees at first, but making their conversation easy to the suitor hath been the cause that the attorneys carry all from them, for the first undertaker in business doth all and he must go through in the cause; he is instructed and can instruct others, he is resorted to on all occasions, he (perhaps) disburseth money, and is easy to let himself into the business."

Even in conveyancing matters the attorney appears to have commenced to get a share. The complicated "settlements of noble families," and probably conveyances of property of any value, were drawn by counsel. Sir Matthew Hale drew the settlement on Richard Cromwell's marriage. Sir Francis North in his younger days not only drew, but himself engrossed, such documents. Scriveners prepared mortgages and securities[3] and doubtless commercial contracts—their own business as money-lenders probably supplying no small part of their professional work. One of them was an artist, says Roger North admiringly, in getting frequent fresh securities and the consequent fees. But

[1] p. 139. [2] *I.e.*, briefs. [3] p. 41.

it seems that attorneys usually prepared bonds, for when one was wanted, "and there was no attorney or clerk at hand to draw it," Francis North said, apologetically, "I think it will not foul my fingers if I do it myself."

There is, however, no mention of conveyancing in a book *The Practick Part of the Law* (1676), bearing the imprimatur of Sir Francis North himself, from which it is possible to glean further particulars of the attorney's position towards the end of the seventeenth century. Attorneys, it declares, were qualified by serving as clerks for six or seven years, "whereby they came to be very knowing in the practice of the Court, the better to manage their *clients'* causes with ability and integrity to the honour of the *Court* and their own credit," and the process of their admission to practise is minutely described. The oath administered to them by the prothonotary (who was afterwards to tax their bills) was a formidable one.

> "*You shall do no falsehood, nor deceit, nor consent to any to be done in this Court; and if you know of any to be done you shall give knowledge thereof to my Lord Chief Justice or others his Brethren Justices of this Court that it may be reformed. You shall delay no man for lucre or malice, you shall increase no Fees, but be contented with the old accustomed Fees. You shall plead no foreign Plea nor sue any Foreign Suits unlawfully to hurt any man, but such as shall stand with the Order of the Law and your Conscience. You shall seal all such process as you shall sue out of this Court with the seal thereof, and see the King's Majesty and the Lord Chief Justice discharged for the same. You shall not wittingly nor willingly sue, nor procure to be sued any false Suit, nor give aid or consent to the same, on pain of being expulsed from the Court*

for ever. And further you shall use and demean yourself in the office of an Attorney within the Court according to your learning and discretion. So help you God."

In 1630 this oath, or one very similar, had been considered obsolete; and the oath of allegiance only was administered. "Both would be better," said the author of *The Attorneys' Academy*, concisely. Probably the practice was fluctuating, and the old oath had been re-imposed at the time when *The Attorneys' Academy* had given way to *The Practick Part of the Law* as the practitioner's guide. The latter book resumes:

"Having taken his oath he is to pay the Fees of Court incident thereto as follows:—

"*Imprimis:* To the Judge's Box, 20*s*. To the Secondary of the Chief Protonothary who giveth the Oath, 12*d*., and for entering his Certificate 12*d*. To the *Cryers*, *Court-Keeper* and other Officers 11*s*.

Then must he have the Certificate of his swearing from the Protonothary in whose office he intends to enter. . . . .

Which being delivered to the *Clerk* of the *Warrants* he enters his Name into the Roll of the Attorneys' Names.

The *Clerk* of the *Warrants* hath for the entering thereof 4*s*. and 2*d*., and for the Roll of that Term 4*d*.

And so he stands charged to pay 4*d*. for the future so long as he continueth an Attorney of the *Court* for each Term."

The fees with which the attorney had sworn to be content do not seem, even allowing for the difference in the value of money, to be excessive. The fees to the Lord Chief Justice, to the other judges, the divident fees, fees to the judges' clerks, to the Custos Brevium, to the chirographer, the clerks of the Treasury and other clerks, fill several pages of *The Practick Part of the*

Law. Those of the attorney in the King's Bench are in smaller compass:—

"For their Fees in every cause in every Term ...	3*s.* 4*d.*
For their Fees at every *Nisi Prius* and inquiry of damages	3*s.* 4*d.*
For their Fees in every Appeal and Assize every term	6*s.* 8*d.*
For drawing every Declaration not exceeding a sheet	1*s.*
For every sheet above one	8*d.*
For drawing every action on the case how short soever	3*s.* 4*d.*
For drawing every ejectment	2*s.*
For every sheet engrossed on parchment ...	4*d.*
For drawing a Surmise upon a prohibition every sheet	1*s.*
For drawing special pleadings every sheet ...	8*d.*
For copies of Declarations, pleas and other things every sheet	4*d.*
For continuing every cause every term	4*d.*
For entering all things above three sheets every sheet	8*d.*
For every Judgment by circumst.	5*s.*
For making every Bail of *Middlesex*, *Distring. nuper vie*, and *Hab. Corp. per præceptum* thereupon	8*d.*
For making every *Hab. Corp. ad fac.*, *Hab. Corp. cum privileg.*, *Certiorari Procedend. Elegit* and *habere fac. possessionem* besides 4*d.* allowed by the Protonothary...	1*s.* 8*d.*
For every sheet in a Writ of Forgery Prohibition Consultation &c.	4*d.*
For entering every *scire facias*	1*s.*"

The "Rules and Orders of the Common Bench" binding on the attorney, complete or incomplete, in

1676, included those regulations already quoted requiring him to have an address in one of the Inns of Court or Chancery, and to attend the court in person on or before the fourteenth day of Michaelmas term, and on or before the seventh day of every other term. In theory the attorney was still in attendance in the court on every day of its sitting, a rule originally devised, perhaps, to ensure the attorney's knowledge of the practice which could then be learnt only in the court. The orders as to his qualification now required five years' service as the preliminary to admission. The abuse of allowing solicitors to practise in the Common Law Courts was to be remedied, but these orders were rarely enforced, in spite of the regulation requiring "a jury of able and credible officers clerks and Attorneys" to be impannelled every three years to inquire of malpractices, of practitioners notoriously unfit, of new or exacted fees, and of those that had taken them under whatsoever pretence, and to prepare a table of fees to be fixed and continue in every office. A similar rule as to tables of fees existed in Chancery, but when in 1732 a Parliamentary Committee inquired into the matter, it was found that the tables of fees had become decayed and illegible from old age, and had never been renewed; and the officers themselves derived their knowledge of what fees they could charge from vague recollections of verbal statements by their predecessors. The committee then regretted that the inquiries upon oath required in the 40th Eliz. had not been made, and

in *The Practick Part of the Law* another order is quoted, which declares that in spite of the rules and the statute of Jas. I., "through the disorderly practice of divers Attorneys of the Court especially of the younger sort," and their non-attendance in court, various irregularities had arisen. Wherefore the orders for attendance were repeated and the officers were to see that process was not issued in the name of any person not an attorney. This provision was probably made necessary by the case of *Heydon* v. *Mynn*, one of the decisions in which our judges have courageously defied the plain words of an Act of Parliament. "Where D. has appeared as an Attorney for A. in an Action brought by A. against B., it cannot be assigned for error that D. was not an Attorney or that there is no such person *in rerum natura*. For it is against the Record and the Admittance of him for an Attorney by the Court makes him an Attorney if he was not an Attorney before this Admittance."[1] Thus, if the officers of the court were not restrained, power was, in effect, given to them to admit a person unqualified by service or education, by the simple process of describing him as attorney in a writ.

Another statement of the practice discloses the reason of the emphasis with which the attorney was ordered to have an address in one of the Inns, and to inform the

[1] Jenkin's Reports, page 332, citing Cro. Jac. 521. The reference to "no such person *in rerum natura*" appears to be an embroidery with which Jenkin's fancy embellished the plainer narrative of Croke.

butler of it, a rule which, as applied to the numerous country practitioners, is, without this explanation, incomprehensible. When the defendant had obtained a rule requiring the plaintiff to declare, if the plaintiff's attorney could not find the defendant's attorney or his clerk, he might, to save a non-suit, deliver his declaration at the prothonotary's office. Similar provisions were made in case the plaintiff's attorney had disappeared. Complaints were made some time afterwards of the number of vagabond attorneys whose addresses were unknown.[1] This is the explanation of the conflict in the Rules of Court and the resolutions of the Benchers from the time of Mary to that of Anne. The bar, growing in a sense of importance, declined to be associated with the inferior ministerial persons. But the judges, for convenience of practice, insisted on attorneys having an address within the legal district, *i. e.*, in the Inns. This address was the counterpart of the modern "address for service," not necessarily the attorney's place of residence or business, but an address where process might validly be served. The butler was the seventeenth century Law List, to whom the practitioner might resort when in doubt where to find his antagonist.

This, then, was the position of the attorney near the close of the seventeenth century. *The Practick Part of*

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[1] Cunningham, "The History and Antiquities of the Inns of Court" [extracted from Drysdale], London, 1780.

the Law, or *The Compleat Solicitor* (which cover the same ground) was his "Annual Practice," the orders of the court there given relating principally to matters of discipline, the actual practice and procedure being probably set down from tradition by the author. Conveyancing and advice in matters of law were still regarded as the proper province of counsel, but the attorney was at least beginning to share the work. While in litigation his ostensible function was inferior and ministerial, it is probable that he was often regarded as the responsible adviser of the parties, and received the credit or discredit of success or failure.

The century closed as it began, with a note of reprehension of attorneys and alarm at the increase of litigation. Sir Matthew Hale a few years before had observed with disapproval the multiplication of attorneys, and, like Parliament, he considered that they were of evil influence upon the state. "Secondly, I shall consider," he says,[1] "what is the reason that in the time of Edward I. one Term contained not above two or three hundred Rolls, but at this day one Term contains two thousand Rolls or more. The reasons thereof may be these, viz., ... 2ndly, Multitudes of attorneys practising in the Great Courts at *Westminster*, who are ready at every Market to gratify the Spleen, Spite or Pride of every Plaintiff." Hale admitted that other causes operated, such as the increase of population; but

[1] History of the Common Law, p. 44.

in part, at least, he subscribed to the opinion expressed by Parliament in 1455 and 1605. That the view of Parliament had not changed we learn from Evelyn. Under date 4th July, 1700, he records that the House of Commons "also voted that the exorbitant number of Attornies be lessen'd (now indeede swarming eating out the estates of people, provoking them to go to law)."

What Evelyn referred to as a resolution was in fact a bill which had come down from the Lords. That House had in 1672 appointed a committee to consider the inconvenience arising from the multitude of practitioners, and had now passed a bill reducing the "excessive number of attornies and such as practise as Attornies." The bill passed its second reading in the Commons, but there is no further trace of it. In the next year another bill "for lessening the number of Attornies and Solicitors" was introduced in the lower House, read a second time, and referred to a committee of forty-six, beginning with Sir Barth. Shower, and ending with "Mr. Soames and all of the Long Robe." Here it also disappeared. It was nearly thirty years later that a similar bill passed both houses, but the eighteenth century began as the seventeenth had ended, with complaints.

The *Spectator* supplies further evidence of the overcrowding of the profession. On 24th March, 1711, Mr. Spectator remarked of "the three great professions of Divinity, Law, and Physick," that "they are each of them over-burdened with practitioners and filled

with multitudes of Ingenious Gentlemen that starve one another." He had already noted the somewhat strained relations between attorneys and the bar, the disdain which "Physicians and Lawyers have when Attorneys and Apothecaries give advice."

When the eighteenth century opened, the addresses of the attorneys were still giving trouble. The rule of 1704[1] had required that all attorneys should be admitted to one of the Inns of Court or Chancery, and was made in consequence of complaints of breach of the "ancient course and usage," and in order that the attorneys "might be resorted to, and the business of law better managed." The difficulty was that the courts could not compel the Inns to admit attorneys,[2] and the rule was at some time relaxed, and if the attorney, by the action of the benchers or otherwise, were prevented from settling in the Inns, he was "to take chambers or dwellings in some convenient place and leave Notice with the Butler where his chambers or habitations are, under pain of being put out of the Roll of Attorneys."[3] Still later an exception was made from the rule in favour of such persons as were "House keepers in London Westminster Southwark or the suburbs thereof and the Liberty of the Tower of London St. Katherine's."[4] By a rule of the King's Bench in 8 George III. the remedy for

[1] See p. 90.
[2] See *R.* v. *Barnard's Inn*, 5 A. & E. 17.
[3] "The Practick Part of the Law."
[4] Gilbert on Executions, and the History and Practice of the Court of King's Bench (1763), p. 363.

vagabondage, which seems obvious to us, was at last ordered. The masters of the court were required to prepare a proper alphabetical book, in which every attorney practising within ten miles of London or Westminster was to enter his name and place of abode, or the place where he might be served with process, and the book was to be open for inspection. The Exchequer Court afterwards made a similar rule. Ultimately the registration of the annual certificates, the establishment of the system by which every country solicitor has a London agent, and London solicitors must have an address for service of proceedings within three miles of the Law Courts, closed the controversy, and "Vagabond Attornies" were no more.

The exclusion of attorneys from the Inns of Court, which emphasised the separation of the two branches of the legal profession, destroyed such control as the benchers had formerly exercised. In the end this, no doubt, proved of advantage to the attorneys, since it left them free to establish an independent and much more effectual organisation; but that organisation was established only after a long interval, during which the profession fell very low in popular esteem, and the abuses fostered by the incursions of large numbers of persons totally unqualified called loudly for reform.

Before a general regulation of the profession was accomplished by Parliament, the Legislature attempted to remedy one of the most obvious scandals connected with it. Sect. 4 of the 12 Geo. I. c. 29 was designed

"for avoiding the great mischiefs and abuses which arise from infamous persons already convicted of wilful perjury or forgery practising as Attornies or Solicitors in Courts of Law or Equity." It provided that persons who practised after conviction should be transported for seven years, a remedy effectual enough, though the modern process of striking the convicted solicitor off the roll seems simpler. The offences specified in this Act appear to have been a special foible of attorneys of the baser sort in the eighteenth century. "I should sooner take you for some poor attorney charged with forgery and perjury," says Mrs. Staff to a prisoner in one of Fielding's plays, and the Gentleman's Magazine[1] records that two of the number received sentence for forgery and were fined, ordered to stand in the pillory and give security for future good behaviour, though the fact that it was thought worth while thus to record the sentence may be held to show that the offence was less frequent than some critics declared.

A voice was raised from within the profession in protest against its shortcomings. A pamphlet by an attorney, *Proposals Humbly offered to the Parliament for remedying the great charge and delay in Suits at Law and in Equity*, appeared in 1707, and reached a seventh edition. One of the mischiefs which the author thought to want redress was "the excessive number of

[1] Vol. I. p. 79.

attornies and solicitors. *The more Hounds the more Hares*, says the old proverb. When business is scarce (as it must be needs fall thin among such great Numbers of them) then they turn Barretors, and do a thousand knavish unjustifiable Things for Bread." For remedy he proposed that no attorney should have more than two clerks—some he said had four, with work for two only—and the clerks should serve seven years in learning their profession. They should be persons of education. The author knew a country attorney so little educated that he took the label of a deed to which the seal was affixed to be the tail of the deed, and cut off that with a penknife thinking he was thereby cutting off the entail contained in the deed. They should be persons of substance as well as learning, "above tricks and petty foggeries," none but gentlemen's sons or those of higher quality, and approved by justices of the peace or the judges of assize.

But to this attorney, who concealed his name, yet whose views were so widely read, there seemed worse evils. The great cause of expense to suitors was the existence of useless officials like the Six Clerks and Registers, "whose fees are exorbitant and grow on us more and more," inserting useless recitals and irrelevant matters in orders and writing them wide and wastefully, since they were paid by the sheet, so that they charged 10*l.* for a single order. These and like officials in the common law courts should be abolished on terms of just compensation. The judges' salaries should be raised

and they should be forbidden to sell the offices to which they had the right of presentation. "I cannot but here observe," he said, "the Infelicity we Attorneys and Solicitors are under of having our Bills filled and swelled with the extravagant Fees and Expedition money paid to those Officers, and the large Fees to Counsel; we bear all the Reproach and suffer for their sins (they are out of our Clients' Hearing and Reach) and it's we are exclaimed against for the large Bills these men occasion; our clients think all is clear gain to us and continually denouncing against us, 'Woe unto ye Lawyers!'—Therefore the Way to make Law cheap is to suppress the useless Offices and reform the Fees of the rest." The anonymous attorney was clear-sighted as well as modest, and his proposals for simplifying procedure in the law by abolishing special pleadings, and giving instead notice of the facts proposed to be relied on in evidence, by giving the right to sue for legacies, by saving the useless expense of fines and recoveries, together with the abolition which he suggested of useless offices, were to be main features in the struggle for law reform a century and a half later. Indeed, solicitors as a class may justly claim to have been, in spite of political conservatism, generally advocates of reform in private law, and especially competent to define the needed remedy.

Another suggestion was to be more quickly adopted. Funds would be needed to pay compensation to holders of suppressed posts; this should be raised, said the

pamphleteer, by taxation of lawyers, which would be gladly borne by them and would be a benefit to the class. "I have always observed that the scandalous Practisers were for the most part come of some abject paltry Race, born and bred in Want." "Let the Serjeants pay 15*l.* a year, Counsel 10*l.*, and the Attorneys 5*l.* Then there should be a fee of 20*l.* at least on Articles to any Solicitor, Attorney, Scrivener, Serjeant or Clerk of Court, and a fee of 50*l.* on call to the Bar, and 30*l.* on admission as Solicitor." This suggested taxation was doomed to wait only until a time of special national emergency; but some other reforms were even closer at hand.

CHAPTER V.

THE EIGHTEENTH CENTURY: REGULATION AND TAXATION.

In 1729 there was passed the Act, which had been long impending, "for the better regulation of Attorneys and Solicitors," the first really effective enactment for the regulation of the profession, and the primary cause of the undoubted improvement in their status, and of their gradual rise in general esteem. The 2 Geo. II. c. 23 commenced by declaring that none should practise as attorneys or solicitors unless they had been enrolled and had taken the oath, which was now prescribed in a modified and much shorter form :—

> "I, A. B. do swear that I will truly and honestly demean my self in the practice of an Attorney according to the best of my knowledge and ability. So help me God."

The judges were again required to examine, by such ways and means as they thought proper, touching the fitness and capacity of the persons applying for admission. For this their lordships were to charge only the modest fee of one shilling; it is not surprising, therefore, to learn that the examinations made under this statute were "intermittent and informal, and extended to little more than questions as to character and service under Articles."[1] "N.B.," said a contemporary critic,[2]

[1] Law Society Calendar, "An account of the origin and progress of the profession of Attorney and Solicitor."

[2] Law Quibbles, 1726; 4th edition, 1736.

speaking of the earlier provisions for examination, "All this is very good but the greatest part of it wholly disregarded." Having passed his examination the new attorney was to receive a certificate of admission written on parchment which was liable to a treble forty shilling stamp.

The next provision of the act was new. Service as a clerk had long been required as a qualification for admission, but it was now provided that the person seeking admission must have been *bound by contract* to serve as a clerk for five years and have served accordingly. This is the first requirement of Articles of Clerkship; so that from 1729, the persons applying for admission were, with an exception to be afterwards mentioned, to be not merely ordinary clerks who had acquired a knowledge of practice and endured a sufficient number of years' clerkship, but persons who had deliberately elected attorneydom as a profession, and whose clerkship was *ab initio* a process of education, and not merely a means of livelihood. From this act sprang a distinct class. "There are several grades of lawyers' clerks," we are told in *Pickwick*. "There is the Articled Clerk, who has paid a premium, and is an attorney in prospective, who runs a tailor's bill, receives invitations to parties, knows a family in Gower Street and another in Tavistock Square, goes out of town every Long Vacation to see his father, who keeps live horses innumerable; and who is, in short, the very aristocrat of clerks."

But the class was very different in the first days of its existence. "In that period boys destined for the inferior branch of the law were caught in their thirteenth year and articled to attorneys, who treated them something better than they would have treated parish apprentices. . . . To stand in the presence of his instructor until he received express permission to take a seat, to call his instructor's wife 'mistress,' and to touch his cap (without presuming to speak to her) whenever he met her in the street; to follow at her heels when she went to market, and bring back her purchases to his master's kitchen; to spend eight hours a day in copying papers or engrossing parchments; these were some of the duties and services required of an attorney's articled pupil when George II. used to play whist with Lady Yarmouth. The treatment which Philip Yorke, afterwards Lord Chancellor of England, received at the hands of his master's wife, at least justifies us in inferring that the articled pupils of inferior solicitors were housed, fed and taught like the apprentices of petty tradesmen."[1]

The still general belief that the number of attorneys was excessive found expression in a declaration that nothing contained in the Act was to authorize or require the judges to admit any more or greater number of attorneys of such court than by the ancient usage and

[1] "A Book about Lawyers," II. 383. But Lord Hardwicke was a "gratis clerk"; no fee was paid on his articles, and it was on this account Mrs. Salkeld ventured to impose upon him unusual duties. Campbell, Lives of the Chancellors, V. 2.

custom of such court had been theretofore allowed. What illusory restriction in the number was here alluded to is not certain; more important was a restriction, now first imposed, the last effort of the legislature to limit the number of the practitioners. No attorney, it was enacted, was to have more than two articled clerks at one time. This regulation, repeated by later Acts, still survives, the sole remaining trace of the long struggle of Parliament against the superior force of the necessities and convenience of mankind.

The restriction of attorneys to that court in which they were sworn, always ineffective, was removed, and any sworn attorney was entitled to be admitted as a solicitor also. The name of the attorney was to be indorsed on every writ issued by him, and, as a further protection to the client, the provisions of 1605 as to the solicitor's remuneration were re-enacted and augmented. By the statute of James I. the attorney had been required to deliver a true signed bill of costs to his client before he could charge him, and to produce receipts proving the payment of any fees to counsel or the court. But now, after delivery of a signed bill, the attorney was to wait a month before he could sue the client to recover its amount. The bill, moreover, was to be written in a common, legible hand, and in the English tongue (except law terms and names of writs) and in words at length (except times and sums), and the bill was to be subscribed with the proper hand of the attorney or solicitor. In other respects English law has

always been severe to a debtor. The tradesman who sold goods to-day, could legally issue a writ against his customer to-morrow; it would be no defence to say that no bill had been delivered, no demand of payment made. The customer could obtain particulars of the claim in the action; the issue of a writ was a sufficient demand of payment; and debt and costs would have to be paid. If the price charged was grossly excessive, the opinion of a jury could be taken on the point. But the legislature has never been content to suppose the attorney as honourable as a tradesman. He must deliver a detailed account of every one of the most trifling things done on his client's behalf; he must give at least a month's credit; and the opinion of a jury, hostile as that would be, was not sufficient protection against his excessive charges. His bill had always been liable to the special process of "taxation," and it was now provided that if a sixth part of the bill were disallowed, the attorney should pay the costs of the taxation. If less than a sixth were disallowed, then the client was to pay. This was the sole indulgence the law allowed. If he charged 6*l.* when the law allowed 5*l.*, he should get 5*l.*, less the costs of obtaining the reduction; if he charged 5*l.* 19*s.*, he should get 5*l.* plus the costs.

These provisions were at first merely temporary, to be in force for nine years and until the next session of Parliament. In 1739 they were continued until Midsummer, 1748, and before that time they had been made

perpetual. In 1732 it was thought worth while to insert a special clause regulating a single charge. For making a copy of a writ and serving it, the attorney was to receive 5*s.* and no more. Next year relief was given in cases where the new regulations as to articles of clerkship had not been strictly observed, and a step of more lasting consequence was taken when attorneys admitted in the superior courts were declared entitled to practise in the inferior ones. These did not include special local courts, where generally a few privileged attorneys monopolised the right to practise; but consisted of the courts of the counties palatine and the courts of great session in Wales. Meanwhile Parliament had been eager to know the results of its last experiment. In January, 1729, a return was ordered by the House of Commons of attorneys and solicitors admitted under the 2 Geo. II. c. 23. The return was presented in a few days, showing 19 attorneys in the Exchequer Court, 135 in the King's Bench, and 573 in the Common Pleas, while the solicitors in Chancery were 6, and 5 others had brought in admittances to be enrolled. This list included, as one would expect, Mr. Richard Roe of Chancery Lane, but was otherwise obviously incomplete. An additional list was, therefore, ordered early in the next year, and the return made to the House showed much larger numbers, the attorneys of the Common Pleas being 2,236, and those in the King's Bench 893. The solicitors in Chancery were about 1,700; but many of these practised also in the

Common Law Courts; and it was computed[1] that the total of practitioners was about 4,000. The returns thus made in 1729 and 1730 constitute, it is said, "probably the first instance ever put forth of names of persons in a particular profession. . . . It is earlier by upwards of 30 years than any Directory of Merchants and Traders either in Town or Country, and the first Court Directory of Names and Residences is that of Boyle in 1794."[2]

To one critic the numbers thus disclosed seemed "a vast superfluity," and the men who had qualified themselves under the late Act were, he thought, "tapsters, weavers, taylors and joiners."[3] Some solicitors, he declared, when provided with money for the trial, disappeared at the critical time; yet the worst thing he could speak from his own knowledge was that a solicitor carelessly left his bag, containing the agreement on which an action was founded, "with the Woman of the Coffee-house he made use of." There it was stolen by "a trickster on the other side," and the action had to be settled, the solicitor paying the costs. But when

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[1] Gentleman's Magazine, XI. 336.

[2] MS. note in one of the copies in the library of the Law Institution, perhaps made by Mr. Bryan Holme, one of the founders of the Law Society, whose name the book bears. An unclassified Directory of London merchants, probably incomplete, had, however, been published in 1677. The earliest Law Lists, it may be noted, were unofficial, and are said to have been compiled and printed by an apothecary named Browne who annoyed his neighbours by working his press on Sunday.

[3] The Law and Lawyers laid open in Twelve visions. To which is added Plain Truth in three dialogues between Truman, Skinall and Dryboots, three attorneys, and Season, a Bencher, London, 1737.

the author had visions, and all the attorneys came up in another world to be judged, there was but one just man to be found. Wapping and Whitechapel, it appears, had especially bad reputations under the second George. "*Wapping* Attorneys, a Tribe so well known that their very Names render all Evidence unnecessary. A Quartern of Geneva is their Term fee, and if they are ever so happy to receive ready money, half sixpence is the utmost they expect down for a Court appearance." Whitechapel was worse than Wapping. Its solicitors were "such a parcel of squinting ill-look'd vermin as I never before saw, and in such shoals." Such criticism, no doubt, under the early Georges, was, as Crabbe said years later of the complaints usual against the law,—

> "common-place, the tale
> Of petty tradesmen o'er their evening ale."

The Act of 1739, 12 Geo. II. c. 39, which prolonged the operation of the Act of 1729, was more than a continuing statute. It was "an act for continuing the act made in the eighth year of her late Majesty Queen *Anne* to regulate the Price of Bread; and for continuing explaining and amending the act made in the second Year of the Reign of his present Majesty, for the better Regulation of Attornies and Solicitors," all the necessities of life being thus dealt with. Various small amendments were made in the law. The omission of an attorney's name was not to vitiate a writ. Quaker attorneys were to be allowed to affirm instead of swearing; the month's grace was not to be allowed

where one solicitor—the London agent, probably—delivered a bill to another, the professional intelligence grasping at once what the "lay gent"[1] required a month to understand. Moreover "from and after the 24th day of June [1739] it shall and may be lawful to and for every attorney, Clerk in Court, and Solicitor to write his Bill of Fees, Charges and Disbursements with such Abbreviations as are now Commonly used in the *English* language, any Thing in any former Law to the contrary notwithstanding." This relaxation caused trouble to the judges. What were the abbreviations thus made permissible? A bill brought before the court[2] contained these contractions: "instrons" for "instructions," "&" for "and," "2" for "two," "Serjt" for "Serjeant," "atty" for "attorney." Were these commonly used in the English language? Lord Mansfield thought they occurred only in attorneys' bills, but the court eventually declared them within the Act. The statute also thoughtfully provided that attorneys who had the misfortune to be in prison were not to commence suits, but they were to be at liberty to continue actions commenced before their imprisonment.

This provision was not, perhaps, unneeded in those times when life was so varied and uncertain, and any man might find himself arrested unexpectedly for some money claim before night. When Peregrine Pickle was in the Fleet, he found his messmates "consisted of

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[1] So, says Roger North, the clients were styled.
[2] *Reynolds, Gentn., one, &c.* v. *Caswell*, 4 Taunt. 193.

one officer, two underwriters, three projectors, an alchemist, an attorney, a parson, a brace of poets, a baronet and a knight of the bath."

At the time when this Act was passed there was in existence an association of London attorneys and solicitors, formed, it is said, as the immediate result of the exclusion of attorneys from the Inns of Court,[1] in which lay the germ of the present Law Society, bearing the title of "The Society of Gentlemen practisers in the Courts of Law and Equity."[2] The earliest record of its proceedings now in existence is dated 1739, but it had apparently been founded previously. If the *Spectator* was to be taken seriously, there was a lawyer's club in existence in 1712. The members met, said Mr. "Spectator's" correspondent, to discuss cases and compare opinions. "This indeed is commendable and ought to be the principal End of their Meeting, but had you been there to have heard them relate their Methods of managing a Cause, their Manner of drawing out their Bills and, in short their Arguments upon the several ways of abusing their clients, with the applause that is given to him who has done it most artfully, you would before now have given your Remarks upon them." The Society which met on 13th February, 1739, was of a very different character, its object—largely social, no doubt, for it met twice a year to dine, assembling at

[1] Report of the Committee on Legal Education, p. xv.

[2] For information as to this Society one is indebted to the paper by Mr. V. I. Chamberlain, read at the Provincial Meeting of the Law Society in 1891.

two o'clock for the purpose—was, at least in part, to denounce and prevent such trickeries as were related at the *Spectator's* lawyer's club. "The Meeting unanimously declared its utmost abhorrence of all male [fide] and unfair practice, and that it would do its utmost to detect and discountenance the same." A committee was appointed to consider how this might best be done. Two years later the committee was directed to "take into consideration any matters relating to the benefit of suitors and the honour of the profession," and it proceeded to consider (apparently without the least legal authority) the alleged irregularities of a practitioner. It entered its protest against those members of the profession who had stood in the pillory, or been convicted of highway robbery, continuing to practise; and it joined with Parliament in regretting the increasing number of practitioners. On the other hand, it defended with some vigour professional interests. It fought the scriveners, when their livery company proceeded against solicitors practising conveyancing in the City, and the Six Clerks, who attempted to practise as solicitors; it extracted an apology from a serjeant who in addressing a jury had referred to the ignorance of attorneys; and it endeavoured to obtain a more reasonable scale of costs. Nor were its efforts confined to professional matters. The society gave assistance to the promoters of a "Bill for regulating trials at Nisi Prius, and for the more effective summoning of juries"; it promulgated a scheme for avoiding delays and expense

in Chancery; and it anticipated Lord Brougham by nearly a century in an attempt to establish courts for the more easy recovery of small debts. It is not until 1810 that trace of the society is lost, and throughout its career it seems to have deserved well of the State by its endeavours to amend the law, and its efforts towards the extrusion of dishonourable practitioners.

That there was need of such a society appeared from a lamentable case adjudged in 1746. One of the solicitors in Chancery, also an attorney of the Common Pleas, whose name appears in the list printed in 1730, was convicted of conspiracy to accuse a man of some property of a criminal offence in order to obtain his wealth. Thereupon he was ordered to be struck off the roll, and the Clerk of the Petty Bag was to see to it. This, it is stated, was the first instance of such an order in Chancery. The victim may have been guilty; yet, perhaps, it is permissible to hope otherwise. Conspiracy is a charge easy to make against a solicitor, difficult to disprove, and very difficult for a jury to disbelieve; and the offence here alleged seems too gross and crude for a professional hand. The criminous attorney should be credited with some subtlety; it is a mistake to depict him as a mere villain of halfpenny sheets.

A perverted ingenuity is abundantly manifest in the case of another gentleman, Mr. Frazer, whose practice engaged the attention of the courts in 1757.[1] "This

[1] *Frazer's case*, 1 Burrow's Reports, 291.

Frazer, being an attorney of this Court," said the report, "had taken for his articled clerk one *Smith*, a *turnkey* of the King's Bench prison; a full-aged man, and who still continued to act as turnkey. It did not appear that any money was paid; or that the master fed, lodged or entertained the clerk (though the articles, indeed, covenanted 'that he should') nor did the clerk officiate for *Frazer* but in matters relating to the prison. It appeared that *Frazer* had since the articles (which were dated only two years ago in 1755) become concerned in sixty-three causes on behalf of the prisoners in the gaol." The attention of the court having been called to the matter by the clerk of the papers of the prison, the court promptly declared the articles void and had them cancelled. Such articles, it declared, were merely collusive, and intended to secure the business arising from the prisoners, doubtless profitable enough, drily adding that "the exercise of the office of a *turnkey in a prison* was both in itself, and also according to the intent and spirit of the Act for regulating attorneys, a very improper education for the profession of an attorney."

The writers of the eighteenth century who depicted the attorney, encouraged perhaps by such unfortunate instances, did not shrink from strong colour. In Farquhar's "The Twin Rivals" (1702) Hermes Wouldbe asks Mr. Subtleman "What are you, sir?"

"*Subtleman.*—Of Clifford's Inn, my lord; I belong to the law.

Hermes Wouldbe.—Thou art the worm and maggot of the law, bred in the bruised and rotten parts, and now art nourished in the same corruption that produced thee. The English law as planted first, was like the English oak, shooting its spreading arms around, to shelter all that dwelt beneath its shade; but now whole swarms of caterpillars, like you, hang in such clusters upon every branch that the thriving old tree now sheds infectious vermin on our heads."

This is in the true Adelphi vein; one hears the loud applause of the gallery as the period closes. Sir Richard Steele, who had a large experience of litigation, and is recorded to have retained at different times no less than twenty-eight attorneys,[1] hurled no taunts at them. But the hard-hearted creditor moved him to write in the *Spectator*,[2] "the law of the land is his Gospel, and all his cases of conscience are determined by his attorney." Fielding, who, too, spoke with knowledge, said some hard things of the profession in his plays. Queen Ignorance was supported by "attorneys all completely arm'd in brass"; but speaking in his own person in the novels he uttered

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[1] Life of Sir R. Steele, by G. A. Aitken, 1889. It has been attempted to demonstrate the relative unimportance of solicitors from the fact that, in Steele's play "The Conscious Lovers," the client consults two serjeants without any attorney. But these serjeants were imposters, lovers in disguise, and what should an attorney have done in such company? The bad character of the stage attorney is explained by the same consideration. Except as the "necessary serviceable villain" he is not wanted. Nobody is less dramatic than a solicitor of good character, or less necessary to the dramatist. The lay gent can pronounce a benediction on triumphant virtue.

[2] No. 456, 13th August, 1712.

opinions which must have commended themselves to attorneys. "This Scout," he said, in "Joseph Andrews," "was one of the fellows, who, without any knowledge of the law, or being bred to it, take upon them in defiance of an Act of Parliament, to act as lawyers in the country, and are called so. They are the pests of society, and a scandal to a profession to which, indeed, they do not belong, and which owes to such kind of rascallions the ill-will which weak persons bear towards it." To Fielding those vermin, "brokers and pawnbrokers," were worse than the lawyers, and so, especially, were the ignorant justices of the peace. Of the legal utterances of those justices, both Fielding and Smollett give amusing specimens; of their acquirements both were contemptuous. Fielding said that in cases of settlement of paupers an appeal was almost certain if an attorney lived in the parish, but if a justice of the peace lived there, it was almost certain to succeed.

It is to Smollett, however, that we owe the portrait of an eighteenth century attorney drawn at full length. From that truculent author praise was not to be expected. His high-spirited heroes thought it a rare jest to play a trick upon an attorney which resulted in his being badly beaten. To them attorneys were thick-skulled pettifoggers, whose heads it was a gentleman's duty to break; and the author rejoiced with them when the consequent action for damages ended in a non-suit. But the portrait drawn in his less known *Launcelot Greaves* is not unfavourable.

"Tom Clarke was a young fellow, whose goodness of heart, even the exercise of his profession had not been able to corrupt. Before strangers he never owned himself an attorney without blushing, though he had no reason to blush for his own practice, for he constantly refused to engage in the cause of any client whose character was equivocal, and was never known to act with such industry as when concerned for the widow or orphan, or any other object that sued *in formâ pauperis*. Indeed he was so replete with human kindness, that as often as an affecting story or circumstance was told in his hearing, it overflowed at his eyes. Being of a warm complexion, he was very susceptible of passion, and somewhat libertine in his amours. In other respects, he piqued himself on understanding the practice of the courts, and in private company he took pleasure in laying down the law; but he was an indifferent orator, and tediously circumstantial in his explanations. His stature was rather diminutive; but, upon the whole, he had some title to the character of a pretty, dapper, little fellow."

Impecuniosity—though the word was not yet invented—troubled the attorneys, in spite of their supposed gains. Swift, who did not love the law, supposed that, to relieve the unprofitable tedium of the vacation, the attorneys as well as the bar went circuit. His "Helter Skelter; or the Hue and Cry after the Attorneys upon their riding the Circuit," is rather fable than history; or possibly, like Goldsmith in "The Deserted Village," he drew a picture of Irish life in English surroundings. Whether fact or fiction, the verses[1] doubtless give Swift's own estimate of the profession's character.

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[1] "Helter Skelter" is said to be a parody on Davenant's not very important "Vacation Thoughts," and on Ambrose Phillips.

"Now the active young attorneys
Briskly travel on their journeys,
Looking big as any giants
On the horses of their clients;
* * * * *
Brazen-hilted, lately burnish'd,
And with harness-buckles furnish'd,
And with whips and spurs so neat,
And with jockey-coats complete,
And with boots so very greasy,
And with saddles eke so easy,
And with bridles fine and gay,
Bridles borrow'd for a day,
Bridles destined far to roam,
Ah! never, never to come home.
And with hats so very big, sir,
And with powdered caps and wigs, sir,
And with ruffles to be shown,
Cambric ruffles not their own;
And with Holland shirts so white,
Shirts becoming to the sight,
Shirts bewrought with different letters
As belonging to their betters.
With their pretty tinsel'd boxes,
Gotten from their dainty doxies,
And with rings so very trim
Lately taken out of lim—
And with very little pence
And as very little sense.
With some law, but little justice,
Having stolen from my hostess,
From the barber and the cutler,
Like the soldier from the sutler;
From the vintner and the tailor,
Like the felon from the jailer;
Into this and t'other county
Living on the public bounty;

Thorough town and thorough village,
All to plunder, all to pillage;
Thorough mountain, thorough valleys,
Thorough stinking lanes and alleys,
Some to—kiss with farmers' spouses
And make merry in their houses;
Some to tumble country wenches
On their rushy beds and benches;
And if they begin a fray,
Draw their swords, and—run away;
All to murder equity
And to take a double fee;
Till the people all are quiet
And forget to broil and riot,
Low in pocket, cow'd in courage,
Safely glad to sup their porridge,
And vacation's over,—then
Hey, for London town again."

To Swift was long attributed the more famous *Law is a Bottomless Pit*, otherwise *The History of John Bull* (1712), containing the record of an interminable law suit. It was Arbuthnot, however, who "fixed the name and character of John Bull upon the English people"; and John Bull in his first presentation is described as an indomitable litigant. The persuasions of his wife, the pecuniary sacrifices necessary to continue the suit, the constantly renewed delays, were long insufficient to detach him from his trusted attorney, Humphrey Hocus. "I was always hot-headed," said John Bull. "Then they placed me in the middle, the attorneys and their clerks about me, whooping and holloing 'Long live John Bull, the glory and support

of the law.'" But even John felt some loss of enthusiasm when he "looked over his Attorney's bill."

"When John first brought out the bills, the surprise of all the family was inexpressible at the prodigious dimensions of them; they would have measured with the best bale of cloth in John's shop. Fees to judges, puny judges, clerks, prothonotaries, philisers, chirographers, under-clerks, proclamators, counsel, witnesses, jurymen, marshals, tipstaffs, criers, porters; for enrollings, exemplifications, bails, vouchers, returns, caveats, examinations, filings of words, entries, declarations, replications, recordats, nolle prosequies, certioraries, mittimuses, demurrers, special verdicts, informations, scire facias, supersedeas, habeas corpus, coach-hire, treating of witnesses, &c.

'Verily,' says John, 'there are a prodigious number of learned words in this law; what a pretty science it is!'

'Ay, but, husband, you have paid for every syllable and letter of those fine words. Bless me, what immense sums are at the bottom of the account!'"

The indignation with which a true-born Englishman would repudiate the suggestion that his cause should be brought in any but the highest court is finely put: "Dost think that John Bull will be tried by pie-powders!" But, in spite of all his eagerness for law, the litigant realises at last that his attorney would have better served his interest by hastening a conclusion.

No doubt this is an allegory. It was against the war, not law, that Arbuthnot was writing; it was not at an attorney, but the Duke of Marlborough, that he aimed his shaft. But this merely emphasises the disesteem in which attorneys were held. If, as Sir Walter Scott says, "it was scarce possible so effectually to dim the lustre of Marlborough's splendid achievements as

by parodying them under the history of a suit conducted by a wily attorney, who made every advantage gained over the defendant a reason for protracting law procedure and enhancing the expense of his client," it was because no tricks were so well known as law tricks, and no one so much the object of general censure as the attorney.

But if the opinion of these critics was unfavourable, there was little disposition among attorneys of the better sort to gainsay them. A petition presented to Parliament by the attorneys of Bristol in 1786 and 1787 represented that "many improper persons who are a Disgrace and Scandal to the Profession and a Nuisance to Society gain Admission to the Roll by undue means," —the chief of these being fictitious clerkships, the clerk being articled without payment of fee or duty; and the petitioners desired, as the better part of the profession has always desired, that their calling should be "confined to persons of liberal education, neither deficient in Integrity or Professional Knowledge."

This petition, and other petitions from different parts of the country, instigated by the "Society of Gentlemen, practisers in the Courts of Law and Equity," were occasioned by the creation of a new and unwelcome incident in the careers of attorneys and solicitors, their liability to special taxation. In earlier times they had been specially assessed;[1] in 1698 they had, in common with many others, been required to pay a poll tax of 1*l.* But in 1785 the readjustment of our national finances

[1] See p. 88.

occasioned a much more serious impost, and legal practitioners shared with soap, pawnbrokers, gloves and mittens, the burden of fresh taxation. As part of a scheme of annual licences which Pitt was endeavouring to introduce into our fiscal system,[1] solicitors and attorneys were required, as a condition of their right to practise in the superior courts, to take out an annual certificate of their admission, and upon this to pay a duty of 5*l.* or 3*l.* Those dwelling "in any of the Inns of Court or in the cities of London or Westminster, the borough of Southwark or the parishes of St. Pancras and St. Mary-le-Bone, or within the Bills of Mortality," were to pay the higher sum, other practitioners paying 3*l.* only; and, to prevent evasion, it was provided that any one residing for forty days in a year within the limits of the higher duty should pay at the higher rate. The Six Clerks and other officials were also subjected to the tax. It was an admirably ingenious system for collecting a considerable sum at the most trifling expense, since the victims were made their own tax collectors. At the same time every retainer given to a solicitor to institute or defend a suit (which retainers or "warrants of attorney" were then required to be filed in court) was to bear a 2*s.* 6*d.* stamp, no part of which was to be charged to the client.[2]

[1] Dowell, History of Taxation and Taxes, III. 14.

[2] The courts formerly took extreme care in verifying the authority of the client to act on a litigant's behalf. Originally the appointment was made publicly in court; then a written authority was required which was filed with the proceedings. The last stage is a complete reversal of the original practice. No evidence of appointment is now

The latter tax bore with undeniable hardship upon the four attorneys of the Mayor's Court, who petitioned Parliament in 1786. They, being monopolists, had purchased their posts "for large considerations." But the fees in that court were very small, "having never been raised." For issuing an action their fee was 5*s.* 4*d.* By former Acts they had to pay 2*s.* 6*d.* fees; by the new Act they had now to pay 2*s.* 6*d.* more, and the profit left for them was the sum of fourpence only. On bails they fared worse, for the fees swallowed up the whole of their charges. Very few actions were disputed or proceeded farther; they had therefore no opportunity of making any subsequent charges. The petition was referred to a committee,[1] but whether any remedy was prescribed for their distressing case does not appear.

In 1792, the taxation imposed seven years earlier produced 18,943*l.*, but the necessities of the revolutionary war with France required yet larger sums; and the loss occasioned by the abandonment in 1795 of two minor imposts, 1*d.*, 2*d.*, or 3*d.* a pair on gloves and mittens, which had proved a failure, and that on the registration of births,

required; the statement of the solicitor that he has been instructed, implied in his taking some step on the client's behalf, is sufficient; and the court does not attempt to test its truth. The change is, perhaps, unintended testimony to the improved status of solicitors. The course of Roman law relating to legal representation had been very similar. "Agency passed through three periods; in the first no agent was allowed, except in two or three cases; in the second an agent could be substituted in court by certain solemn words (*cognitores*); and, lastly, without any formality, by an ordinary mandate (*procuratores*)."—Hunter, "Roman Law," p. 1025.

[1] Journals of the House of Commons, 7th March, 1786.

deaths, and marriages, "was recouped by an enormous tax upon the legal profession of 100*l.* on articles of clerkship for attorneys in the metropolis, and 50*l.* for country practitioners,[1] and an increase in the duty on paper."[2] But this "enormous tax," it is curious to find, was suggested by the profession itself, and has never been wholly unpopular, inasmuch as it has served to exclude some undesirable persons from the roll. The first suggestion had been made in the anonymous pamphlet of 1707. The petitions from the attorneys and solicitors of Bristol and Newcastle, presented to the House of Commons in 1787,[3] had complained that while the petitioners paid the annual duties and duties on the warrants of attorney, unqualified persons had set up as conveyancers and were not within the Act. They therefore, and in order to improve further the standing of the profession, suggested an extension of the Act to conveyancers, and the imposition of "a large duty" on articles; the Chancellor of the Exchequer was not slow to act upon the hint, and the large duty of 100*l.* was imposed.

In 1804 Pitt increased all these taxes. The annual certificate duty for attorneys and solicitors of less than three years' standing in their profession was, indeed, left unaltered; but for their seniors the duty was

[1] Or, rather, it would seem from the 31 Geo. III. c. 14, 100*l.* on attorneys practising in the superior courts, and 50*l.* on those in the Welsh courts or the courts of the counties palatine.

[2] Dowell, II. 210, 211.

[3] Journals, 42, p. 663.

doubled, and assessed at 10*l.* for London practitioners, and 6*l.* for those in the country; and the fees on articles of clerkship were raised to 110*l.* and 55*l.* respectively. Protest was, of course, raised, but professional opinion then, as now, was divided, and some compensating advantages were found by the well-to-do. At a time of foreign war, it was felt to be unpatriotic and impolitic to resist; and moreover it was thought that the tax was "calculated to render the profession more respectable, and eventually to cause the members of it to rank higher in the estimation of society," inasmuch as it would "have a tendency to drive out of the profession the vile and needy pettifogger, to whom alone is attributable all the obloquy which the publick, from a want of due discrimination, attaches to the whole body."[1]

In 1815 the tax produced 58,856*l.*, and it is not surprising that the Chancellor of the Exchequer was tempted to increase the burden on a body not unanimous in resisting it, and little able, even if unanimous, to make effective opposition. In that year the annual duty was increased to 12*l.* in London, and 8*l.* elsewhere; the duty on articles was increased to 120*l.* in town and 80*l.* elsewhere, and a new fee of 25*l.* was imposed on admission to practise—a striking contrast to the modest fees which had been fixed as a maximum in 1729.[2] No further change was made until 1851.

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[1] See The Gentleman's Magazine, Vol. 76, p. 153 (February, 1836).

[2] One curious effect of this legislation was the admission of a few

The taxation initiated by Pitt was at least a testimony to the growing importance of the attorney's office. The close of the eighteenth century was the period when the inferior and ministerial nature of the attorney changed; and it was then that the long process was completed by which the relations of attorney and counsel to the client were reversed. The rule of the bar which requires that instructions should come from an attorney, and not from the client direct, is said to be not older than the end of the eighteenth century. But it seems likely that the rule merely defined a practice which had been followed for some considerable time previously. From the days when advocates were first allowed to appear, the time of Chaucer's serjeant who had been oft at the Purvis in St. Paul's, whither clients resorted, to at least the time of Sir Matthew Hale and Sir Francis North, clients had been at liberty to resort to counsel direct; but it was inevitable that, when attorneys ceased to be ignorant of all but the nature of writs and the offices where they were issued, they should attain some share in giving advice, and that their opinion should often be followed without resorting to counsel at all. This had early been so in London; it must, one would think, have been even more the case in the country, where they alone were at

ingenious but unqualified persons to practise. "These were instances of persons who obtained certificates from the stamp office, without ever having been articled, or ever having paid the fee on articles, or being in the least entitled to practise." Evidence of Mr. Maugham before the Committee on Legal Education, 1846.

hand to advise. The rules made under Elizabeth, James I., and Charles I., probably ineffectual to restrain their growing importance, are undoubted evidence of the fact. By the time of the Stuarts their patronage was enough to give a young barrister opportunity to rise. Under the Georges they had come to advise and initiate as well as conduct legal proceedings, counsel merely drawing the pleadings and acting as advocates in court. This change has often been attributed to the grasping nature of the attorneys; in the opinion of Roger North it was due rather to the supercilious neglect by counsel of the more laborious part of their work. In reality it sprang from the nature of things, assisted less by the encroachment of attorneys than the dereliction of the bar. The rule was supported at first because of its tendency to increase the dignity of counsel; and in more recent times it has been defended on the ground that the advocate to whom the parties are no more than algebraic symbols, coming fresh to the consideration of a completed case, is more likely to form a comprehensive and well-balanced judgment than the solicitor, who has followed it through various developments and is anxious for the welfare of a client who may be a friend and is certainly a paymaster. Before the middle of the eighteenth century the rule was so well established that the associated London attorneys felt able to protest against the acceptance by counsel of an irregular retainer, and obtained an apology. Subsequently they condemned "the practice of certain barris-

ters, counsel and draftsmen who received clients and transacted their business independently, without the intervention of any attorney or solicitor, as highly improper, and to be discountenanced by the Society and the profession at large."[1] Lord Brougham once threatened, by way of protest, to accept briefs from lay clients, and, it is said, actually did so without taking a fee. But that example was not likely to prove infectious, and during the latter half of the eighteenth century the rule became so firmly established that it was with a sense of shock that both branches of the profession in 1846 received the judgment of the Common Pleas in *Doe* d. *Bennett* v. *Hale*, deciding that the practice depends on no rule of law, and cannot be enforced by legal penalties. The judges evidently came to this conclusion with regret. "There certainly has been an understanding in the profession," said Lord Campbell,[2] "that a barrister ought not to accept a brief in a civil suit except from an attorney; and I believe that it is for the benefit of the suitors and for the satisfactory administration of justice that this understanding has been generally acted upon; but we are of opinion that there is no rule of law by which it can be enforced. . . . . The advantage to be derived from sub-dividing the business of conducting a suit, and having two orders in the profession of the law, between

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[1] Mr. V. I. Chamberlain's paper on "The Parentage of the Law Society."

[2] 15 Q. B. 171; 19 L. J. (N. S.) Q. B. 353.

whom it should be distributed, became more and more felt. . . . . I highly approve of the demarcation finally drawn between the functions of the attorney and those of counsel, and I believe the intervention of the attorney between the counsel and the party has greatly contributed, not only to the dignity of the Bar, but to the improvement of English jurisprudence."

Professional opinion has never been unanimous on this point, but it has been strong enough to enforce the rule, and the "intervention" of the solicitor has now long been universal, except in the less important cases in the criminal courts. Whatever the results to the bar, the rule has certainly contributed to the importance and dignity of the solicitor's calling. The person to whom the client first resorts, by whose advice in most matters he is guided, can never be a mere mechanic of the law; he is certain to be more than the mere passer of papers into pigeon holes, the messenger for the delivery of documents, which the earliest attorneys seem to have been.

CHAPTER VI.

THE EIGHTEENTH CENTURY: CONVEYANCING AND CRITICISM.

While the status of attorneys and solicitors was improved by the bar rule of etiquette requiring their intervention, more direct gain, both in position and profit, was derived from the acquisition of conveyancing business. This had been originally above their aspiration. To say of an attorney "he made false writings" was not an actionable slander, for it was not the business of an attorney to make "writings." That was the duty of the bar, and so it *was* libellous to say of a barrister, "he is no lawyer, he cannot make a lease." It seems probable that while counsel still prepared settlements and conveyances, and received money for investment, the attorneys and scriveners had in the time of the Stuarts drawn simple instruments, such as money bonds; but during the eighteenth century the attorneys gradually came to share with counsel the preparation of all kinds of deeds. Two causes doubtless contributed to this. In every part of the country the attorney was at hand, ready to receive the client's instructions, while counsel were settled only in the large towns; and the operation of the statutes and rules of court, requiring the education and a long term of studentship for attorneys, had resulted in their being no longer mere ministerial persons of an inferior nature, but

men reasonably well acquainted with the general body of the law, and competent to prepare at least such conveyances as were in common use. This occupation of the territory once peculiar to the bar had not passed without grave reprehension. The preface to Sheppard's *Touchstone* (1641) stated forcibly the evils to be expected from such intrusion.

"Considering withal the mischief arising everywhere by the rash adventures of sundry ignorant men that meddle so much in these weighty matters [the common assurances and conveyances of the Kingdom] there being now almost in every parish an unlearned, and yet confident, pragmatical attorney (not that I think them all to be such) or a lawless scrivener, that may perhaps have some law books in their houses, but never read more law than is on the backside of *Littleton*, or an ignorant vicar, or it may be a blacksmith, carpenter or weaver, that had no more books of law in their houses than they have law in their heads, and yet as apt and able (if you will believe themselves) either to judge of a conveyance, and by the rules of law (of all which they are utterly ignorant) to determine the strength and goodness of a title or estate, already made, or to make a conveyance to transfer the property of things from man to man as the most learned and best counsellor of them all; and, therefore, undertake with great confidence and dispatch, without any scruple any business whatsoever offered to their hands; wherein they deal with men in their estates as many that are called physicians (but in truth empiricks) deal with men in their bodies (an evil fit for the consideration of Parliament)."

Of attorneys, W. S. says further :—

"I conceive them to be usurpers upon and intruders into other men's callings, and that they thrust their sickles into other men's harvest, and that they have not yet learned that rule of divinity, *To abide in that calling wherein they are called*, but exercise themselves in things too high for them."

This lofty rebuke by Mr. Sheppard is not the more impressive if it be true, as confidently stated,[1] that the *Touchstone* which he published as his own, was in fact the work of Sir John Doderidge, the manuscript having been acquired by Sheppard at the sale of that eminent judge's effects. In any case, the preface failed to stop the advancing tide. Probably the same motives which led counsel to abandon to attorneys the laborious part of litigation, induced them to discontinue a portion at least of conveyancing work. In Bohun's *The Practising Attorney or Lawyer's Office: containing the Business of an Attorney in all its Branches*, 2nd edition (1726), conveyancing is treated as one of the four main divisions of the attorney's practice, and instructions are given and precedents provided for his benefit. In 1778, Lord Mansfield treated conveyancing as being the business of attorney or counsel indifferently; and, indeed, there was nothing in the law for some time after excluding any other persons from its practice. The village schoolmaster, who was reputed to make the villagers' wills, was long a favourite toast at the circuit mess.

Counsel, then, though the principal, were not the only rivals, and in London, at least, the attorneys and solicitors, before they were confirmed in their title to conveyancing practice, had to defend their right against opponents less numerous, but better organised, than the barristers—the scriveners, who formed one of the minor livery companies of the city. These had, at one time,

[1] Preface to Preston's Edition of Sheppard's Touchstone.

been monopolists within London itself and a distance of three miles from it, of the art of preparing all "documents, charters and deeds, and all other writings which by the Common Law or Custom of the Realm required to be sealed"; and though their charter was of more recent date than those of many of the other companies, they claimed to have been, time out of mind, a company by prescription under the title of "Common Scriveners, or Writers of the Court Letter of the City of London." While attorneys were still unorganised, and but imperfectly trained, the scriveners had been controlled by their guild, and their education provided for by the apprenticeship system, which insured at least seven years' preparation before they could commence shop-keeping. In 1390, a form of oath had been prescribed, by which the scriveners bound themselves not to draw instruments dated long before or after the actual preparation. The same oath revealed the fact that the scriveners also were of "an inferior nature," if not as regards commercial contracts, at least in respect of dealings with real property; for the scrivener on his admission to the company was to swear "not to make any Dede touching Enheritance nor other Deed of great Charge (whereof I have no Conyng) without good Advisement and Information of Counsaile." The history of the company, since the attorneys and solicitors ultimately succeeded to the practice of their art and mystery, is part of the history of solicitors themselves, and is, in some respects, curiously parallel to the story of the attorneys.

Malpractices had occasionally followed the possession of power. In the latter half of the fourteenth century two scriveners were pilloried for forging title deeds, and the more serious punishment of imprisonment had followed the making of false indentures of apprenticeship.[1] By the time of Henry VI. there had been intrusions of unqualified persons, and consequences were felt or apprehended similar to those resulting from the practice of ignorant attorneys. On account of the "great parrils and Mischiefs caused by unskilful persons," it was in 1440 ordained that none be admitted scriveners unless approved and examined by the wardens and six, or four, persons enfranchised in the craft, and by the Lord Mayor and Aldermen, who exercised a general superintendence of the companies. The apprenticeship system, no doubt, generally secured technical efficiency, but in 1497,—preceding the solicitors by three hundred years—a preliminary examination was established, at least in grammar. Divers apprentices, it was declared, had been bound and duly served their term that had not had "their perfect Congruity of Grammar, which is the Thing most necessary and expedient to every person exercising and using the Scyence and Faculty of the said Mystery." It was, therefore, required that the apprentice, before entering into his indentures, was to be examined, and, if his education was not approved, he was to be sent by his

[1] The Livery Companies of the City of London, by W. Carew Hazlitt, 1892.

master to the Grammar School, until at least he be "competently erudite and learned in the Books of Genders, Declensions, Preterits and Supines, Equivox and Sinonimes, with the other Petty Books." The names of apprentices were to be entered in the books of the company (as articles of clerkship to attorneys were required to be registered by the Act of 1729), and the scrivener, when admitted, was to sign the "Common Paper" of the company, as solicitors still sign the Roll.

It is difficult to suppose that during this time the attorneys had no share at all in conveyancing. When most of the litigation of the country related to land, every attorney must have been familiar with the forms and effect of deeds, and it is highly improbable that, outside London, at least, the attorney was content to apply his knowledge merely to the construction of instruments, and leave the profitable work of preparing them to others. Moreover, West's Symbolœographia,[1] one of the earliest books of precedents of conveyances, was the work not of a scrivener or barrister, but of an attorney. If an attorney had no practical knowledge, West would not have ventured to prepare an elaborate treatise for the instruction of others. Yet he says expressly that "a maker of instruments hath heretofore for the most part bin called a scribe, scrivener or notarie clarke or writer."[2] But, he continued, "now, alas, how

[1] See p. 55.

[2] Symbolœographia, Bk. I. s. 2.

lamentable a spectacle is it to see how farre and how dangerouslie our writers of instruments decline from the ruled order and smooth paths of the ancient Greeks and Romans. For when they had none but honest, learned, modest, faithfull men, chosen with provident circumspection, ours, alas the while, on the other side, not one of ours for the most part (for I except all godlie wise men) I say is praise worthie either for vertue learning modesty or credit. Will you therefore knowe what manner ones they be: forsooth some, and that a good some, parish clarks and schooll boies, so void of this skill that they unneth write one word aright or make one good letter of the whole crosserow, yet in God's name they will needes be coiners of conveiances, yea and that manie times touching matters of great moment and to no small losse and vexation of the parties which put them in trust therewith."

Profiting, perhaps, by their attorney instructor's guidance, the scriveners appear to have been prosperous, and escaped part of the repeated censures directed against attorneys. Whether they were established in many other towns does not appear, but in York there was a similar guild, and in London their position was apparently undisputed. "Master Dustbox, the scrivener," was sent for in Middleton's Michaelmas Term,[1] when the grasping citizen required a mortgage

[1] 1623.

of the country gentleman's land; the Court Letter, or court hand style of writing, was admired.

> "Your court-hand generally
> Takes beyond thought,"

says the lawyer's clerk in "The Devil's Law Case."[1] The number of practitioners increased, and they were "frequently used and employed in weighty Affairs and Matters of Great Moment and Trust." In 1617, therefore, they were in a position to obtain a charter, and "the Freemen of the City of London using the Art or Mistery of Scriveners within the same City and Suburbs thereof, commonly called the Writers of the Court Letter of London," were duly incorporated. The members were to pay the ancient quarterly fee or "quarteridge" of 8*d.*, twice the amount for which the attorney was liable, and to attend the courts of the company under various penalties. To the company were given the usual powers of discipline, taxation, and search. Byelaws made with the approval of the Lord Chancellor and the two Chief Justices repeated the requirement of an examination before admission, and imposed an oath by which the scrivener bound himself to be true and just in his office, that all his deeds should be well and truly done, and be read over before being sealed. The deeds were not to bear "any date of long time past," nor to be post-dated at all, and neither for haste nor carelessness was the scrivener to take upon

[1] 1607.

himself to make any deed touching inheritance of lands or estate for life or years, nor any deed of great charge, without good advice and information of counsel.

With prosperity the scriveners magnified their office. They became agents to lend money; they lent a good deal of their own; they received money for their customers to be held until investments were found; they verified and certified accounts; they translated foreign documents. In effect, therefore, they were not merely the conveyancing solicitors, but the commission agents, bankers, accountants, and translators of their time, and many of them were also notaries. In addition to this, a good many scriveners, although unqualified, practised, prior to the Act of 1729, as attorneys. They did not altogether escape censure;[1] one may even doubt if they were very much more popular than the attorneys if the names given them by the dramatists—Gripe, Money-trap, Trapland—stand for anything; and as in their day they had been innovators, so now they were to make a fierce struggle against innovation.

The quarterly fee, small as it was, first caused trouble, and numerous instances are recorded between 1632 and

[1] The felonious attorney, Subtleman, who forges a will in "The Twin Rivals," calls himself a scrivener; and "Forgewill" is the name given to one of the scrivener's craft in Vanbrugh's "Æsop." The statute 12 Anne, st. 2, c. 16, against usury, directs its thunders against "all and every scrivener and scriveners, solicitor and solicitors, driver and drivers of bargains for contracts"; so that there had been some fusion of the professions alike in function and unpopularity. The complaints of usury against scriveners were many, and cropped ears, in token of the pillory, for forging were said to have been not unknown.

1655 of complaints made to the Lord Mayor of non-payment. It was during the Commonwealth, apparently, that attorneys first commenced in London to compete with scriveners, and some of the attorneys, having thus made themselves liable, paid the quarterage to the company without complaint. But in the Great Fire the books of the company were destroyed, and without records it was less easy to prove the company's rights; soon after the visitations authorised by the charter to search for bad work ceased to be made, and by the middle of the eighteenth century great numbers of persons, attorneys, notaries, and others, had taken on themselves to practise scrivenery without apprenticeship or training. Formerly, said the scriveners, clients had come to them in order to avoid the attorneys; but since the Act of George II. attorneys had become comparatively respectable, and since then practised conveyancing. In the scriveners' view, however, this was inverting the true order of events. It was because they did scrivenery, said the clerk of the company, that the attorneys were thought respectable. Until the Act of 1729 many scriveners, as well as less qualified persons, acted as attorneys. This was now impossible, while the attorneys' encroachments were unchecked; and some of the better attorneys had found their new work so profitable, that they abandoned for it their proper business of bringing and defending suits. Indeed, everything worked against the ancient company. Many freemen of other companies practised scrivenery, and so the

company suffered loss of fees. The free scriveners themselves had become lax in their allegiance. Many of them had articled their sons to attorneys, instead of apprenticing them to their own craft, five years' training thus sufficed them instead of seven, and a larger means of livelihood was obtained. To make matters worse, the rise of banking had taken away from them a more valuable resource. The company had by 1748 dwindled to some fifty members, its hall had been sold half a century before (though then Throgmorton Street had been almost full of scriveners), and unless prompt measures were taken the company would go the way which the Bowyers, the Fletchers, and the Loriners had gone.

In that year a committee was appointed by the company, and its report (1749) is now the chief authority for the history and grievances of the race. It was decided to appeal to the Common Council, and the sympathy of the citizens was sought by pointing out that the new practitioners were "foreigners," *i.e.*, not freemen of the city. The difference of the two professions was insisted on; scriveners, said the committee (forgetting an exemption obtained in 1357), were not free from serving on juries and municipal offices; the attorneys were free only because they were supposed to be in daily attendance at the courts. The oath of the attorney was less comprehensive than the scriveners', and did not meet the requirements of the public safety. But the scriveners, it seems, had themselves overlooked the limitations their oath imposed, to prepare deeds of

importance only under the advice of counsel; for, they declared, they were "often *solely* instructed in the drawing *and settlement* of Deeds of Great Consequence, particularly in cases of Purchases of Real Estate, Mortgages, Wills and Family Settlements upon Marriage and otherwise." The notaries were as bad as the attorneys. Yet it was not desired, or perhaps it was felt to be impracticable, to prohibit attorneys practising scrivenery; the object was to compel them to legalise their position by becoming members of the Scriveners' Company; and on their doing so, it was suggested, they might "more effectually hinder School Masters, Petty Stationers, and others who had neither education nor experience," from a competition injurious to both attorneys and their rivals. This olive branch did not bud, and only a few attorneys took up their freedom of the company. A petition to the Common Council was presented; that body appointed a committee to consider the matter, and to the committee the clerk of the company made a long speech (happily for us honoured with print) in support of the petition, in which he pointed out the grievousness of disobedience to the law in London, the very Camera Regis, Cor Reipublicæ, Epitome Regni, which possessed in itself a legislature with power to remedy the ill. In other trades, he said, there were constant prosecutions of "foreigners" for infringement of the livery's monopoly. The Common Council leant a ready ear, and on 6th May, 1752, an "Act" was made by which it was

enacted, ordained, and established, that from the Midsummer ensuing every person following the occupation of scrivener should take up his freedom of the city and become a freeman of the Company of Scriveners. For breach of this provision a penalty of 5*l.* was imposed, which might be recovered by the Chamberlain of the City of London by action of debt in the Mayor's Court, London. The penalties recovered were to be divided between the London Workhouse and the prosecutors, a proviso which proved to be of small importance. Possibly some doubt was entertained of the power of the Common Council to make such a law, for it was thoughtfully provided that the master and wardens of the company should give to the chamberlain security for the costs he incurred in any action so brought by him.

This provision, at least, was well thought of, for the attorneys and solicitors of London recognized that a great part of their living was put in jeopardy. Diana of the Ephesians was not more vigorously defended by her craftsmen, and the litigation lasted for eleven years; the "Society of Gentlemen Practisers" clearly saw that the existence of the profession in the city was at stake and undertook the defence. A formidable array of counsel was engaged.[1] Proceedings were first instituted by the City Chamberlain against Mr. Alexander, a city solicitor, for the penalty pursuant to the Common Councils Act (or, perhaps, a bye-law of 1712), and as

[1] Mr. Chamberlain's paper, Proceedings of the Law Society—Annual Provincial Meeting, 1891.

directed by that Act, they were brought in the court officially styled "His Majesty's Court of Lord Mayor and Aldermen to be holden in the outer Chamber of the Guildhall in the City of London," *i. e.*, the Mayor's Court. The attorneys appear to have felt a disinclination to leave the determination of a question so important to a city company to a jury drawn exclusively from the city, and to judges who owed their election to the Common Council and Aldermen. They therefore pleaded their privilege, their right to be sued in the courts to which they were attached. This being decided against them, they declined to plead further, and judgment was given for the plaintiff. A writ of error was obtained, but the judgment of the superior court confirmed the judgment of the Mayor's Court. So far, then, the scriveners were successful. But "the formidable array of counsel" pointed out to the solicitors that a more advantageous course might be followed in another case. Another solicitor, Mr. Smith, was selected and proceedings instituted by the Chamberlain against him. Again privilege was pleaded and disallowed; thereupon the solicitors pleaded on the merits. The scriveners applied that the case should be tried before a jury of freemen. This the court refused, and the jury was summoned in the usual way.[1] Before this tribunal the cause was heard on 11th December, 1760, and Mr. Ellis,

[1] In the report of *Adams and others* v. *Malkins and another*, . . . by Philip Hurd, Attorney-at-Law, and a member of the Inner Temple, London, 1812, it is stated that the court on the other hand ordered a jury of non-freemen or foreigners.

the money-scrivener mentioned by Boswell, at whose table behind the Royal Exchange Dr. Johnson had shared, or perhaps monopolised, the most literary conversation he ever enjoyed, was among the witnesses for the plaintiff. For the Law Society it was urged that the scriveners were mere brokers and money-lenders; they no longer kept "shops"; that the Charter was illegal in conferring powers of visitation and search; that if attorneys were scriveners so also were barristers, and they, too, would be liable to have their chambers entered by the "visitors" (who might be a grocer and a fishmonger), who would be in a position to complain that counsel's draft was blotted and blurred, and next day to talk of the deed all over the Exchange. Numerous barristers were called to prove that, save in one or two cases at most, all their instructions in conveyancing matters had come from attorneys, though one firm of scriveners was said to have kept a barrister as one of their clerks to settle deeds. The Recorder summed up strongly against the plaintiff's claim, and the jury promptly returned a verdict for the defendants.[1]

The litigation ended, therefore, in the triumph of the attorneys; a result with which there was little cause for public dissatisfaction, since failure would have created a distinction which could hardly be defended upon principle between London and country solicitors, to

[1] Mr. J. C. Wootton, Clerk of the Scriveners' Company, was kind enough to produce a manuscript report of the trial of *Harrison* v. *Smith*, from which the above account is taken.

the disadvantage of the capital. An attempt was made to obtain an Act of Parliament for the protection of the scriveners, but this also failed. The success of the solicitors' society was "duly celebrated and pieces of plate given to the surviving counsel, with suitable inscriptions recorded in the minutes." An incidental disadvantage followed the decision, for, it was suggested, some unscrupulous members of the profession, by describing themselves as scriveners, and therefore "traders," obtained the advantage of the bankruptcy laws which were not then available for professional men, and were not intended for their benefit. But it removed any fear of serious obstacles to practice in London, and there had already ceased to be fear of rivalry elsewhere. That conveyancing was not regarded as especially attorneys' work was evident from the fact that for many years conveyancing charges were not, like other costs, liable to taxation. In 1786 the attorneys felt strong enough in their possession of conveyancing business to protest against the intrusion of other persons into what they thought should be their preserves. The duties imposed by the Statute of 1784 occasioned several petitions from attorneys and solicitors[1] pointing out that, beside the burdens directly imposed, their remuneration was lessened by having to provide "large sums of Money in Advance" for stamps imposed on the different instruments of conveyances prepared by them; that the late

[1] Journals of House of Commons, Vol. 41, p. 301, 7 March, 1786.

Act did not extend "to a description of persons who call themselves Conveyancers, ... and that for want of a positive Law restrictive of the practice of Conveyancing many illiterate and unqualified Men have intruded themselves into that Branch of the Profession to the great Prejudice of the Public by the Promoting of Litigation and the Disgrace of the Profession of the Law." The attorneys of York[1] referred to conveyancing as a branch of their profession which they carried on "jointly with the proper business of an attorney and solicitor" in the courts. These petitions were referred to a committee including the Attorney-General and Master of the Rolls, "and all who Come to the Committee" were "to have voices."[2] What the committee recommended does not appear, but in the subsequent statutes conveyancers were included in the taxation imposed, and required to take out an annual licence, and by 44 Geo. III. c. 98 penalties were imposed on those persons not being solicitors, proctors, notaries, or counsel who for reward prepare deeds. Conveyancing is now, therefore, restricted to the legal profession.

Of the deeds now prepared only a very small proportion are submitted to counsel; in the large majority of cases the solicitor acts on his own responsibility in approving a title and preparing the necessary assurances. London solicitors, indeed, are said to resort in such matters with unnecessary frequence to Lincoln's Inn;

[1] Journals of House of Commons, Vol. 42, p. 568.
[2] 8th March, 1786.

and to be less expert than country solicitors, in whose practices conveyancing is relatively more important. The number of conveyancing counsel is much smaller than formerly; but this is due to economic causes rather than to any desire of solicitors to magnify their office. The solicitor, indeed, has every inducement to send the papers to counsel, for by so doing he saves himself trouble and is protected against the consequences of mistake. But the great simplification of conveyances effected by changes in the law has rendered the assistance of counsel less necessary; and, at least in transactions involving small sums, the addition of counsel's fee would be a very appreciable increase of cost. And the competition among solicitors is sufficient to overcome a somewhat feeble professional opinion, and to reduce the charges made in such matters below the legal scale of fees to the smallest sum which the practitioner thinks will remunerate him for his work.

In spite of this acquisition of new business the taxation was found a burden grievous to be borne. The petitions of attorneys presented to Parliament in 1786 and 1787 at the instigation of the "Society of Gentlemen Practisers" represented "that the fees to which the petitioners are entitled by the Course and Practice of the Courts of Justice having been fixed at a very distant period[1] and Continued to the present Time, are,

[1] In 1733 the prothonotaries *had* agreed upon a new scale of charges: 1*s.* a folio for drawing pleadings, 8*d.* a folio for drawing briefs, and 4*d.* a folio for copies.—"Observations on the Remuneration of Attorneys and Solicitors," 1853.

in consequence of an advance in the Price of all the Necessaries of Life, become an inadequate Compensation for their Trouble, and the several Stamp Duties on the proceedings of the Courts of Justice and the different Instruments and Conveyances prepared by the Petitioners have greatly lessened that Compensation, by compelling them to provide large Sums of Money in Advance for those Duties, and other necessary Disbursements and Expenses for which they are not allowed any Interest or Emolument."[1] The petitions did not produce any immediate result. At no time in our history, probably, would it have been easy to persuade Parliament that any scale of remuneration was too small for lawyers of any class. Yet the attorneys of 1787 might have quoted in their favour the opinion expressed by Adam Smith ten years before.

"We trust our health to the Physician; our fortune and sometimes our life and reputation to the lawyer and attorney. Such confidence could not safely be reposed in people of very mean or low condition. Their reward must be such, therefore, as may give them that rank in society which so important a trust requires. The long time and the great expence which must be laid out in their education, when combined with this circumstance, necessarily enhance still further the price of their labour." The law, "as well as many other liberal and honourable pro-

[1] A little tract published at Chelmsford in 1785, "A free Enquiry into the Enormous Increase of Attornies" (which inquired into nothing), described the attorneys as devouring locusts who acquired princely fortunes. The number of attorneys was estimated, with absurd exaggeration, at 24,000, but the average income of the owners of these princely fortunes was not calculated by the author to be more than 130*l.* per annum.

fessions, is in point of pecuniary gain evidently under-recompensed."[1]

Parliament was, perhaps, pre-occupied, the Lord Chancellor disinclined. Ten years elapsed and nothing was done. In 1798, a special meeting of the Society of Practisers promoted further memorials to the Lord Chancellor and the Master of the Rolls, not immediately successful. "After much trouble and many interviews with the Judges in 1806, a Bill was prepared to enable the Lord Chancellor, the Lord Keeper, and the Lords Commissioners of the Great Seal, together with the Master of the Rolls, to regulate the fees of the sworn clerks and Solicitors of the Court of Chancery to be presented to Parliament by the Master of the Rolls who promised to move for leave to bring it in directly." The fact that the judges' own salaries had been raised in 1799 perhaps assisted the solicitors to obtain this promise. However, a shorter way was found, and during the brief chancellorship of Lord Erskine a new scale of costs in Chancery was promulgated by order of 26th February, 1807. It was officially declared that "by the great alteration of the times and the heavy stamp duties and various taxes, and other heavy charges and expences of late years imposed, the present fees and rewards now allowed and taken by the Solicitors of this Court are greatly inadequate to the duties to be performed by them, and to the support and maintenance

[1] Wealth of Nations, I. 157 (Bohn's ed.).

of the practisers of a liberal profession. And it being for the benefit of the suitors that skilful, attentive and proper persons should be encouraged in the due and faithful discharge of the business and employment of solicitor entrusted to their care by the suitors by a reasonable recompense and reward for their services," and the subjoined schedule of fees seeming reasonable, the schedule was ordered to be adopted. The solicitors were so gratified, and—in view of the general hostility of judges to their race—probably so surprised, at the success of their efforts that not only were thanks voted to the Lord Chancellor and the Master of the Rolls, but it was resolved that "Lord Erskine" be a standing toast at their dinners—a resolution which, from the likelihood of popular misconstruction, was probably not intended for publication. On the Common Law side the attorneys were less successful; a new scale of fees was, indeed, made in 1810, but in the view of the persons most interested, the fees remained inadequate. There was in some cases, a small increase, but others were reduced and some charges abolished with the special procedure which occasioned them.

Attorneys have never, at least since judges ceased to be paid by fees, been favourites with the Bench. Blackstone, with his usual felicity of phrase, says that they "are peculiarly subject to the censure and animadversion of the judges." To denounce the conduct of an attorney, who not being a party to the cause is not entitled to be heard, was long a favourite sport of their

lordships; an amusement doubtless deriving its piquancy from the fact that the judges, when young and unknown counsel, before their abilities had opportunity for display, had been under obligation to the same men. It would be dangerous to say when the practice began. Perhaps the eminent Lord Chancellor Jeffreys set the fashion. He delighted in giving offending attorneys what he called "a lick with the rough side of his tongue," terrifying them, said the historian, with his face and voice, "as if the thunder of the Day of Judgment broke over their heads," and this with especial gusto if the attorney before him had been one of the boon companions with whom in earlier days he had "drunk desperately." During the eighteenth century, which witnessed the greatest improvement in their position and character, both bench and bar always spoke of attorneys with disdain; and towards the end of the century, with Lord Thurlow on the woolsack, and Lord Kenyon as Chief Justice of the King's Bench, they had scant chance of justice in the courts. Lord Thurlow "awakened recollections of Jeffreys." A solicitor, runs one story, was called as a witness to prove a death, and on every statement he made the Chancellor remarked that that was not proof. "My Lord," said the solicitor at last, "it is very hard you will not believe me. I knew him well to his last hour; I saw him dead and in his coffin. My lord, he was my client!" "Oh," replied the urbane head of the judicature, "why did you not tell me that before? I should not have doubted the

facts for one moment; for I think nothing can be more likely to kill the man than to have you for his attorney." This merry jest is said to have ruined the business and reputation of the solicitor. Lord Kenyon, however, did not confine himself to abuse, though in that he did not stint. He "talked of striking an attorney off the roll as he might of dismissing a footman who had offended him." "He encouraged that universal prejudice against attorneys," continues Lord Campbell, "by which I have frequently seen the administration of justice perverted. Although bred in an attorney's office, and long aspiring no higher than to be an attorney, he seemed to think the whole order pettifoggers and their occupation almost necessarily disreputable. Instead of restricting his animadversions to peccant individuals, he extended an angry suspicion to a whole class, containing many men as honourable as himself, and much his superiors in education and manners."[1] In one case, at least, he departed from the most obvious principle of justice, that the defence should be heard before sentence is pronounced. An application was made *ex parte* against a Mr. Lawless, an honourable gentleman in large practice, for a rule *nisi* to strike him off the rolls. Lord Kenyon not only granted the rule, but at once suspended Mr. Lawless from practice until the rule was argued.

[1] Lives of the Chief Justices, III. 83. The following charge depends on the not too careful testimony of Lord Campbell, but does not appear to be contradicted in the apologetic Life of Lord Kenyon, by the Hon. G. T. Kenyon.

Mr. Lawless happened to be in court; he rose and expostulated, begged the judge not to make the order, and pointed out that he was concerned in eighty causes then in progress. "So much the worse for your clients," retorted the Chief Justice, "who have employed such a man!" The allegations against the attorney were proved to be quite unfounded, and the rule was discharged. But Lawless "died of a broken heart."[1] Had a shoeblack been so treated, Parliament would have thundered and the heavens echoed.

Lord Tenterden continued the tradition: "If conspiracy was the charge, and an attorney amongst the defendants, there was small chance of an acquittal;"[2] and other instances might be given. Even of late years the tendency has not been altogether unobserved. "It is painful," said Mr. Joshua Williams, Q.C., "to see men who have risen to eminence and wealth on the shoulders of solicitors, trying all they can to cut down their fees and lessen their importance." But the greater suavity of modern manners, and the feeling that even the meanest of the Queen's subjects is entitled to justice, or, at least, to a trial, have made treatment like Lord Kenyon's impossible in the superior courts. And one ought not to forget the considerations tending to explain the judicial severity. It is not necessary to suppose with Bentham that the judge's indignation is only simulated "when some miserable attorney made into a scapegoat

[1] Lives of the Chancellors, III. 38.
[2] *Ibid.*, III. 32.

is immolated with great ceremony by the arch-sacrificator," or that it is only "for the sake of deluding the people" that it is "now and then necessary to offer up an attorney." Judges see more than other men of the "peccant individuals" who deserve censure, and less than many of the practice of honourable solicitors; it was, in fact, a generous emotion which prompted them to be severe upon misconduct displayed where most integrity is called for. The temptation to evoke popular applause presses heavily on some judges; the sub-prejudice of their own branch of the profession against the other, entertained during a lifetime, is not less weighty. Only a gentleman in grain, it seems, can resist the temptation to resent the patronage or the neglect by attorneys which mark a barrister's early years.

It was to be expected that by such judges as Lord Kenyon the causes for which an attorney could be struck off the roll would be extended. No complaint could fairly be made of their action in cases where the attorney had been guilty of any criminal offence. The attorneys themselves have always insisted on a high standard of conduct, and the penalty of removal from the roll was regarded, not as an additional punishment, but as a measure for the protection of the public. So when one of their number had been convicted of stealing a guinea, burnt in the hand, and sent to prison for nine months, and four or five years later an application was made on that ground to strike him off the roll, Lord Mansfield declared that the "defendant

having been burnt in the hand is no objection to his being struck off the roll." [1] Where an attorney allowed a certificated conveyancer to practise in his name as attorney, he was promptly removed. No objection could be felt to the infliction of the penalty on an attorney who handed to the sheriff a list of the men whom he desired to be summoned on a jury. It was, perhaps, unduly harsh to strike off the roll all attorneys who evaded payment of the duties imposed by the Stamp Act, but this was Parliament's doing. But the court was most severe on anything which savoured of disrespect to itself. It threatened to remove an attorney who set up the defence of infancy on behalf of a man who was actually thirty years of age. An attorney who signed the name of a fictitious barrister to a demurrer suffered the penalty. And a device, apparently innocent, for obtaining a judicial decision involved another in the censure of the court. Mr. Elsam was unfortunate enough to be the devisee of land under a will whose construction was doubtful. To ascertain the true meaning he commenced a suit, and in a special case for the opinion of the court set out dealings with the land which had not actually taken place, just as the court itself did in respect of the fictitious lease to John Doe. On this being discovered, Lord Tenterden said it was impossible to pass over such conduct. But in view of the fact that there was no fraud, that the

[1] *Ex parte Brownsall*, Cowp. 829 (1778).

attorney's intentions were innocent, and that he had already spent 40*l.* upon the litigation, the court merely ordered him to be fined another 40*l.*, and imprisoned till he paid it.[1]

Another luckless practitioner, who forgot the rule to meddle in no State matters, was treated with less clemency. "A respectable attorney who ventured to say in a coffee house that he was in favour of having no King, and that the constitution of this country was a bad one, was found guilty of sedition, and sentenced to six months' imprisonment, to stand in the pillory, and be turned out of his profession."[2] It was not for nothing that attorneys were officers of the court, peculiarly subject to the animadversion of the judges. Lord Bramwell thought he might live to see the day when a rule would be moved for, to show cause why a solicitor should not be hanged because he was a solicitor.

In spite of judicial hostility, it was by judge-made law that about this time the attorneys established their right to retain the documents of a client until their charges were paid. The doctrine of solicitors' lien, said Lord Mansfield in 1779,[3] is not very ancient, but was established on general principles of justice. It was, apparently, to that great lawyer that the extension of the doctrine of lien, from tailors and warehousemen to

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[1] *In re R. J. Elsam*, 3 Barn. & Cress. 597.

[2] History of Modern English Law, by Sir R. K. Wilson, 1875, p. 161.

[3] In *Wilkins* v. *Carmichael*, 1 Doug. 104.

attorneys, was due. "Sir James Burrows mentioned to the Court that the first instance of such an order in this Court [the King's Bench] was the case of one *Taylor* of *Evesham*, about the time of a contested election; and Lord Mansfield said he himself had argued the question in the Court of Chancery." The research of Mr. Whitley Stokes[1] has since discovered a case so early as 1688, in which it was held that "an attorney, having money due to him from his client, should not be compelled to deliver up the papers before he was paid his fees, &c. But the doctrine does not seem to have become established" until later. It was in 1719 that Taylor of Evesham obtained an order stopping his client from receiving money recovered through his services until his bill had been paid, together with such immortality as attaches to the hero of a leading case. Sixty years after came the case of *Wilkins* v. *Carmichael*, which evoked the reminiscences of Lord Mansfield, and the doctrine was fully established by the end of the century. It is curious that this should have happened at the time when the professional charges of solicitors began to bear a larger proportion to the sums they disbursed than had been formerly the case. Probably when the fees payable to the numerous officials constituted a larger part of his bill, the attorney, not often a man of means, took greater care to be provided with funds by his client. Yet at a later date the examiners are said

[1] A treatise on the Liens of Attornies and Solicitors, and other Legal Practitioners. By Whitley Stokes, Esq., 1860.

to have passed with acclamation an articled clerk who, to the question, "What is the first step to be taken in an action?" replied, "Get something on account of costs."

In 1791 the Court of King's Bench, after communication with the Common Pleas, laid down rules supplementing the restrictions made by the Act of 1729; and from the "Gentleman's Magazine"[1] one learns that rules of court were then promulgated by being read by the clerk of the court. No attorney, though qualified, it was provided, was to have an articled clerk if he himself were engaged as clerk to another. More important was the stipulation that every person desiring to be admitted an attorney should previously, for one term, exhibit a notice in the office of the court containing his name and the name of the person to whom he had been articled. Opportunity was thus given for objection to be made on the ground of character or for other reasons. These rules were possibly *infra vires;* they were clearly excellent in aim, and the former was afterwards adopted by Parliament. Under the latter rule the Law Society at a subsequent period made inquiries into the character of the applicants, and where necessary opposed admission. A caveat was entered at judge's chambers, and notice given. Thereupon the matter was brought before a judge and the sufficiency of the objections decided.

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[1] lxi. 2, 771.

Within two years another "rule" was made, described in the "Gentleman"[1] as "an important rule for the regulation of the conduct of attorneys." Lord Kenyon "said he verily believed that the majority of attorneys were honourable men, and of service to the community, but there were many others who were the greatest pests of society." His lordship in this adopted the words of Horace Walpole. "He desired attornies to take notice that they were bound to give their clients the best advice in their power, and to conduct the causes intrusted to them as if they were their own. If an attorney instead of honestly advising his clients advised them to prosecute groundless or frivolous actions for the sake of the costs, attornies would be compelled to pay the expenses themselves." No one could take objection to this; it was a reiteration of the most elementary rule of professional conduct. But, continues the reporter, "this rule alarmed several attornies who were present, but was applauded by the counsel as replete with wisdom and justice." The attitude of counsel is, no doubt, correctly stated; they are almost compelled to applaud the utterances of judges before whom they practise. When Lord Kenyon told a jury to consider their verdict "and, having discharged their consciences, to return to their hearths and homes in peace, and afterwards to lay their heads upon their pillows with the delightful consciousness that they had performed their duties, and

[1] lxiii. 182, 16th February, 1793.

might say 'Aut Cæsar aut nullus!'" it was not for counsel to question the repletion of his wisdom. But one may doubt whether the several attorneys who were present, were so unwise as to proclaim themselves by their alarm dishonest advisers and promoters of frivolous suits.

At the same time as these judicial amenities there was happening the great reconstruction of society which, even more than the reorganisation of the profession and the alterations in practice, contributed to the improvement in the position of the modern solicitor. The close of the eighteenth century saw vast economic changes; the growth of the great manufactures in the north, the increase of population, the expansion of the empire, and the consequent enormous development of commerce, may be said almost to have changed the subject-matter of the law. The "industrial revolution" was accompanied by a revolution,—not, indeed, in the form of the law; that was tardily to follow—but in the nature of the causes which occupied the courts. Lord Mansfield was engaged in forming, by judicial decisions, the law of contract; the Chancery Court in defining the law of trusts, rationalising the administration of estates, creating the separate property of married women, and developing the other doctrines once peculiar to the equity courts. From these sprang the commercial lawyer, the family solicitor. Attorneys were able to turn their attention from the personal actions for

slanders and assaults, the sport of heated and vindictive litigants, to disputes upon matters of contract involving larger sums, and principles more difficult of application; and to regard the law as no longer merely the instrument of private vengeance, but in its loftier aspect as the science of human relations.

The century did not close without an attempt from within the profession to reorganise its constitution and especially to improve its education. In 1794 and 1795 Mr. Joseph Day, a London attorney, prepared a scheme for the formation of a "Royal College of Attornies-at-Law and Solicitors," with some powers of control over the profession and of establishing examinations. In support of this he saw several judges, who commended his plan, the Attorney-General, and many members of Parliament; he obtained subscriptions and numerous promises of support from other attorneys, and prepared a bill for introduction into Parliament. This was printed, and discussed at meetings of "The Law Society or Law Club" (probably the Society of Gentlemen Practisers, &c.), and seemed to have good prospects of becoming law. But difficulties arose. It was doubted whether the judges would undertake the duties of government of the college; the Attorney-General suggested a Charter instead of an Act of Parliament, and opinion was divided. The Law Society grew jealous, apparently, of an outsider who sought to lead the profession; an angry correspondence ensued, and eventually, it seems, the proposals were abandoned.

It was not till, thirty years later, another generation had grown up that the formation of The Incorporated Law Society accomplished a part of the plan for which Mr. Day had laboured strenuously, but in vain.[1]

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[1] An Address to the Attorneys at Law and Solicitors practising in Great Britain, and to the public, upon the proceedings of a Committee of the London Law Club, relative to a Bill proposed to be presented to Parliament for the incorporating and better regulation of Practitioners. By Joseph Day. 1796.

CHAPTER VII.

THE NINETEENTH CENTURY: EDUCATION AND REMUNERATION.

It is not easy to trace a parallel between the progress of solicitors and the general political progress of the nation; the great dates in the professional record are not famous for remarkable events in the national history. The Ordinance of 1292 was, no doubt, conceived as part of the famous legislation of Edward I.; it belongs to the same period as the Statute of Mortmain, the Statute of Winchester, and the Statute of Quia Emptores, notable pages in the history of the law. But the statutes of 1402, 1605 and 1729, which reorganized the profession, were passed in quiet times not memorable for feats of arms or for other achievements of the legislature. No men, however, are more quickly and directly affected than are lawyers by variations in the financial prosperity of the country. The great changes in their influence and position which the last century has witnessed, due in part to more efficient control of the profession, are rather to be ascribed to the general improvement in the position and means of the population at large. "The difference between the

London of Charles I. and that of George III.," it has been said, "was far smaller than the gulf which separates the Metropolis of the early days of George III. from those of Victoria." How great is this gulf may be seen from the description, given by Professor Leone Levi, of England a little more than a hundred years ago :—

"Though, politically, England had by this time, and especially after the success of the Seven Years' War, become a first power in Europe, economically she had as yet acquired no absolute supremacy. Her industries had accomplished none of their prodigies. Manchester was not glorying in her tall and ever smoking chimneys. An inland town of no pretensions for beauty and at some distance from the sea, she consumed but small quantities of cotton to work into fustians, vermilions, and dimities. To London her manufacturers went for the raw material from Cyprus and Smyrna, and thither they returned their goods for exportation. Liverpool had scarcely any of her glorious docks; the stately barks from America had not yet found their way to her harbour. She had but an insignificant trade, and a large portion of it consisted in the wretched traffic of slaves from Africa to the West Indies. Alas! that it was so profitable a trade. Leeds and Bradford were not very conspicuous; and even London, the only place of real importance in the kingdom, which then monopolised almost the whole of the foreign trade of the country, had not a tithe of the shipping and commerce which now enrich the banks of the Thames. In size she was little more than that left by the Romans—'the city within the walls.' Her population was probably half a million only. There was then but one bridge connecting London and Southwark. The Bank of England was but a small building flanked by a church. The Royal Exchange was one rebuilt after the destruction of that built by Sir Thomas Gresham, which was again destroyed by fire in 1838. Lloyds' was still a

coffee-house at the corner of Abchurch Lane. There was no Stock Exchange, and not a single dock. The port was blocked up by a fleet of merchantmen, and the quays heaped with bales, boxes, bags and barrels in the greatest possible confusion. Scarcely one, indeed, of the great institutions and buildings which constitute modern London was in existence one hundred years ago."[1]

At the period of which this was written the population of England was little more than seven millions. Much of the foreign trade was still in the hands of the monopolist companies. The Levant Company, the African Company, and the Hudson's Bay Company were still in existence, and some of them retained their exclusive rights. The East India Company had but just founded its empire. Meanwhile the roads between London and some parts of the country were intolerably bad. The law, it may be added, was almost wholly unreformed. The changes effected in the following hundred or hundred and fifty years were beyond all precedent or prophecy.

Solicitors have, of course, profited, in common with all other classes, by the increased prosperity due to an extended empire, a world-wide commerce, and the series of inventions which have revolutionised both the methods of commerce and the habits of private life. But they may feel some satisfaction in noticing that their profession during this period has improved not only in common with other classes, but relatively more

[1] The History of British Commerce, 2nd ed. p. 4.

than others. Its purification commenced, no doubt, with the statute of 1729; it has become effectual through the modern organisation which has made the profession itself the main reforming agency. The garb of respectability no longer sits with some awkwardness upon the solicitor's shoulders, and the ancient taunts are losing point. Compared with other classes the modern solicitor stands possessed—not, indeed, of larger means—but of a position of greater consideration and popular esteem.

The nineteenth century opened tranquilly for the attorneys; their numbers were observed to increase.

> "One Man of Law in George the Second's reign
> Was all our frugal fathers would maintain.
> He too was kept for forms; a man of peace,
> To frame a contract, or to draw a lease:
> He had a clerk with whom he used to write
> All the day long, with whom he drank at night.
> Spare was his visage, moderate his bill,
> And he so kind, men doubted of his skill.
> Who thinks of this, with some amazement sees
> For one so poor, three flourishing at ease;
> Nay, one in splendour!"[1]

The energies of the Society of Gentlemen Practisers were devoted to procuring the new scales of costs, and to resisting a proposed rivalry by clerks of the Houses of Parliament in the work of parliamentary agents; but the practisers found time to consider the formation among themselves of a volunteer corps to serve the

[1] Crabbe, "The Borough" (1810).

country at their own expense in the event of invasion; and they suggested the creation of a society for the discussion of legal questions by articled clerks. From 1810 the records of the society are lost, though it is known to have existed until 1816, and in 1818 the author of *Palmer's Costs* repeated a suggestion that the Law Society might properly intervene to settle a disagreeable dispute with counsel's clerks concerning their fees. Soon after that date, at latest, it appears to have been dissolved. How, after so long and useful a career, it suddenly ceased is not known; until recently its very existence had been forgotten.

Several provincial societies had been formed meanwhile, having as objects the defence of professional interests, and the maintenance of professional integrity. In 1786 a society had been founded in Yorkshire, another ten years later for Somersetshire; Leeds followed these examples in 1805, Plymouth in 1815, Gloucester in 1817, Birmingham and Hull in 1818; in the same year a similar association was founded in Kent. And in 1825 an effort was made, principally, it appears, at the instance of Mr. Bryan Holme, to re-establish a Law Society for London, under the title of the London Law Institution; but the word "London" was afterwards omitted, as the aim of the society included the membership and support of country solicitors. The promoters thought it singular, they said, that when other trades possessed places of general resort, and institutions for promoting literature and science were springing up on every hand,

that the attorneys of London should still be without an establishment calculated to offer them similar advantages in the way of their profession. Dublin already had its association, why should not London? The reason for delay, they said, was, no doubt, "the incessant labour and attention which professional men" were "obliged to bestow on the concerns of their clients"; which left them little leisure for their own affairs or the consideration of subjects relating to the whole profession. But it was felt that this neglect of their own interests for the sake of the clients should cease. A meeting was held, a prospectus issued, and a society formed, a society destined to play a very important part in the organisation and government of solicitors. The enterprise was originally in the nature of a joint stock company, for the promoters desired to purchase land, to build a hall and found a library, and it was requisite that capital should be raised. A deed of settlement was prepared in 1827, land purchased the next year, and a hall, part of the present building in Chancery Lane, was erected in 1831. A royal charter was then obtained, by dint of considerable exertion, and four years later upwards of a thousand members had joined the society,[1] though the hope originally entertained by its founders, that the principal officers of the courts at Westminster would become members, had probably been abandoned. The society has long been generally known, and referred to even in

[1] Introduction to the Calendar of the Incorporated Law Society, 1891.

Acts of Parliament, by the compendious title of "The Incorporated Law Society"; but it was incorporated under the cumbrous designation of "The Society of Attorneys, Solicitors, Proctors and others, not being barristers, practising in the Courts of Law and Equity of the United Kingdom."

In the prospectus issued in 1825 is found the last trace of the original idea of attorneys as men in daily attendance at the courts, and still a body small enough to meet in one place for the transaction of business. The Hall was to be "an exchange, to be open to Attorneys and Solicitors at all hours of the day; but some particular hour to be fixed as the general time of assembling; to be furnished with desks or inclosed tables running on each side of the room for the whole length of it, affording similar accommodation to those in Lloyd's Coffee House"; and ante-rooms were to be provided for clients and others wishing to see members at the Institution. The original practice, one has seen, was that an attorney did all his work at the law courts, carrying his business in his bag. Attorney Dodge and Attorney Pettifog met their clients at less reputable resorts. The inn subsequently gave way to the coffee-house, and, after a long struggle, the attorney had been compelled to have, at least, an address of his own. The modern practice is that a solicitor transacts nearly all his business at his office. The scheme of 1825 was, perhaps, an unconscious effort to link the fourteenth century with the nineteenth. "To those solicitors,"

ran the prospectus, "who can remember the time when the attorneys resident in the City, and other parts of the town distant from the Inns of Court, were accustomed in the evening to frequent the Coffee Houses in the neighbourhood for the purposes of business, the utility of a place of general meeting will be obvious."[1] Country solicitors, it was said, when visiting London still resorted to coffee-houses, but would find the proposed Hall more convenient; and a general acquaintance between the whole body of attorneys would there be formed and kept up.

The other objects of the society as originally constituted have been more nearly realized. The Hall and buildings were from time to time enlarged; the library, which, the Committee reported with satisfaction, in 1832 contained a thousand volumes, in 1891 contained 32,500; the membership has largely increased. But more important is the position which the society gradually attained as an authority for the education, admission, and regulation of solicitors, and the repression of professional malpractice.

Education was its first work. The aim of the legislature, which for many years had been to restrict the number of attorneys, and afterwards to regulate their practice, was now to ensure their education. The work of regulation had been almost completed by the legis-

[1] The professional day, lasting from 10 a.m. till 6 p.m., is a modern device. At one time the Chancery Court sat in the evening, and the Common Law judges also sat in chambers in the evening, after dinner.

lation of the eighteenth century; little more than codification and such occasional amendments as the change of time occasioned now remained to be done. A vast amount of energy was therefore liberated, and available for promoting the education of the profession. In Parliament and out, constant attention has, for more than half-a-century, been devoted to this theme. In 1821, Parliament had made an effort to secure a higher standard of accomplishment, by providing that one of the five years of an articled clerk's service might be spent with a barrister or special pleader, and that graduates of Oxford, Cambridge, or Dublin should be required to serve only three years, instead of five.[1] It was a far-sighted plan, for at that time, said Sir George Stephen, "scarcely half the bench and less than half the bar could boast of this aristocratic privilege" of education at the Universities. But the profession, as represented by the Law Society, has, in this matter, been always in sympathy with and generally in advance of the legislature. In 1833, the society established courses of lectures for articled clerks on Common Law, Equity and Conveyancing; and in 1836, it succeeded in convincing the judges, who were the authorities regulating the examination of applicants for admission as attorneys,

[1] 1 & 2 Geo. IV. c. 48. A curious blunder was made. It was intended to provide that the statute should apply to those only who took their B.A. degree within six years, or LL.B. within eight years after matriculation; but, as passed, the statute *excluded* those who took the LL.B. degree within the time named. The mistake was remedied in 1822.

that the examinations—hitherto formal and confined to their service under articles—ought to extend to their knowledge of the principles and practice of law. In those days, the clerk whose articles had expired went to the judge in chambers with an affidavit proving his service as clerk; and he, and generally his principal, were introduced to the judge. The judge asked a few questions and granted his fiat for the applicant's admission.[1] It was very unlikely that a judge with plenty of other work to do would wish to prolong the interview or to ensure its repetition by holding the candidate unqualified. A Rule of Court was made for the purpose of the new and more stringent examination, the judges insisting that the examination should be wholly written, while the attorneys desired that some part of it should be *viva voce*. Twelve of the members of the committee were appointed, jointly with the Masters and Prothonotaries of the Supreme Courts, to be the examiners; and in Michaelmas Term, 1836, in the Hall of the Society the first examination was held. This examination, which Lord Russell has declared satisfactory,[2] seemed to Mr. Samuel Warren, doubtless speaking with rhetorical exaggeration, so difficult that not one in ten of the attorneys then practising could have passed it. The solicitors of the time must have reflected with pardonable gratification that the examina-

[1] Archbold's Practice, 1836.
[2] Lecture on Legal Education, 1895.

tion which Parliament had required for many years, and the judges had neglected, had first become effective through them. From the decision of the examiners an appeal lay to the judges; and one candidate was found bold enough to exercise the right, but his success was not equal to his courage.[1]

In 1846 the House of Commons, very justifiably regarding this advance as insufficient, appointed a committee to inquire into the whole subject of legal education, though the original reference apparently extended to Ireland only. This committee took much evidence and presented a report of over four hundred pages. In this, they were pleased to say that the Law Society had endeavoured to provide for the instruction of the young pupil "with a very laudable zeal, seconded by much discretion and intelligence." But what had been done was far from sufficient; and they recommended that a stringent examination should be required into the general knowledge of the student before he was articled. One witness, whose testimony they adopted, had said "that there was not one Solicitor in fifty, even amongst the respectable of the profession, who had enjoyed the advantage of an education of anything like the extent" of that of a boy in the fifth form of a public school. This was especially distressing when one took into consideration "the very delicate and important and complicated relations in which Solicitors must stand

[1] Evidence of Mr. Maugham before the Select Committee on Legal Education.

in reference to the public and their clients."[1] "'It is hardly possible to mention any topic,' we again quote Sir George Stephen, 'or any subject upon which, sooner or later, a solicitor in large practice may not find himself deeply engaged. It is quite impossible to define within a narrow compass the nature of a solicitor's business—it extends to anything; it extends to everything: the fact is, we are, as professional men, entrusted to a very great extent with the confidence of gentlemen; we are entrusted to a very great extent with the most sacred matters connected with gentlemen. It often happens that the protection of their honour and their character, and of course of their property, is left to our zeal and integrity, and when we are brought into this confidential and habitual intercourse with men of every class in society, the highest as well as the lowest, I think that it is most important that the profession should be so educated as to be qualified for carrying on that intercourse as gentlemen themselves; but I apprehend that that qualification can't be attained except by educating them as gentlemen with much greater attention to their general endowments and information than is at present the case.'"[2] To this had the immaterial person swollen in two hundred years. The committee's recommendation, which no one can say was too drastic, was that the proposed preliminary examination should embrace "the so-called

[1] Report, p. xxxv.

[2] Report, p. xxxvi.

commercial education, a competent knowledge of at least Latin, Geography, History, and the elements of Arithmetic and Ethics, and one or more of the modern languages."

The Law Society welcomed this suggestion, and the further suggestion that articled clerks should attend lectures at the Inns of Court, and other lectures specially adapted to their needs, but always more with a view to acquiring a knowledge of the principles of law than those details of practice which are the besetting sin of the man immersed in the actual conduct of litigation. In 1854, the Society recommended the establishment of an examination in science, literature, and the classics.[1] It was not, however, till 1860 that Parliament moved, and by the Solicitors Act of that year the articled clerk was required to pass both a preliminary examination before articles, and an intermediate examination in the general principles of law when half his period of service had expired. It is interesting to notice that for some time the education of the bar was in even worse condition than the solicitors'. One might imagine, said Mr. Walter Bagehot,[2]

"that as the duties of an attorney require less actual legal learning than those of a barrister; as he is excluded from all the best places which barristers monopolise; as his voice cannot be heard in a superior court; as he is obliged to employ a barrister

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[1] Origin and Progress of Attorneys and Solicitors, Law Society Calendar, 1891.

[2] Literary Essays, III. 261.

to speak for him,—his education would be rather neglected by law, and that of the barrister more heeded. The sort of lawyer sedulously patronised would presumably have been more carefully tested, and shown to be qualified than the other kind of lawyer, who is sedulously set down and made inferior. But, in fact, the case is just the reverse. . . . . The law has made rigorous requirements for the legal knowledge of the 'little lawyer' though it has made no requirements at all for the legal knowledge of the 'big lawyer.'"

Men who intended to practise, of course, "read," not as formerly with attorneys, but in the chambers of a conveyancer or special pleader. But the old system of legal education in the Inns of Court which, according to the enthusiastic comment of Fortescue, had made those Inns another and better university, had died. The long probationary period of studentship had gone. The extravagant entertainment expected of the Readers had killed the readings. The "moots," or debates between students on points of law in the presence of a bencher, had become a farce. So early as 1780 the anger of one critic at least had been aroused.[1]

"But at this day what are the qualifications necessary for a gentleman who is a candidate for the bar? Is he examined every term or vacation? No. Are any instructions given him by the benchers or any other by their order relative to what he should read? No. Is he obliged to give any evidence of his having read a single page of any law book? No. Does it appear that he can even read and write his name? Yes. Before he is permitted to dine in the hall he is obliged to

[1] Cunningham, The History and Antiquity of the Inns of Court, preface, vi.

execute a bond, conditioned for paying the cook, the butler, the wash-pot and other officers of the house their accustomed fees and perquisites, and this is the only proof he is obliged to give of his learning. . . . . Hence the great number of ignorant unprincipled impostors *Counsellors-at-law* who corrupt the morals and disturb the peace of society in England, Ireland, and the plantations. . . . . The greater part of the *practising* barristers are needy adventurers."

Exercises were "kept," but, said Mr. Bagehot, "though it is so short a time ago people now-a-days will hardly believe what those exercises were. A slip of paper was delivered to you written in a legible law-stationer's hand which you were to take up to the upper table, where the Benchers sat, and read before them. The contents were generally not intelligible; the slip often began in the middle of a sentence, and by long copying and by no revision the text had become quite corrupt. The topic was 'Whether C. should have the Widow's estate?' and it was said that if you pieced all the slips together you might make a connected argument for and against the Widow. . . . . But in 1850 the trial 'case' had dwindled down to the everlasting question 'Whether C. should have the Widow's estate?' The animated debate had become a mechanical reading of copied bits of paper, which it was difficult to read without laughing. Indeed, the Benchers felt the farce, and wanted to expedite it. If you kept a grave countenance after you had read some six words, the senior Bencher would say, 'Sir, that will do,' and then the exercise was kept. But this favour

was only given to those who showed due gravity. If you laughed you had to read the 'slip' all through." The existence of this strange mockery of education had been duly attested by unimpeachable witnesses before the committee, and a reform was effected which must have been greatly to the satisfaction of candidates, who could choose *either* to attend lectures or pass an examination; the examination, now compulsory, is of later date.

The committee which inquired into legal education extended its inquiry to the moral and social equipment of solicitors, and, it is painful to record, formed an unfavourable opinion. The attorneys' "moral and intellectual education" alike were declared to be "very inferior." The committee reflected on "the evils arising from low attorneys originating schemes and speculating upon various companies," and they were prepared, like the third shabby fellow in "She Stoops to Conquer," to "damn anything that's low." The classes of society from which attorneys usually sprang were declared to be "inferior" also. These opinions were founded almost entirely on the evidence of Sir George Stephen, who then acknowledged himself the author of the work, "Adventures of an Attorney in Search of a Practice," which appeared anonymously in 1839; and, until Mr. James Payn's "Confidential Agent," was probably the only book with a solicitor-hero. It is a very entertaining volume, animated entirely by the true professional spirit, and full of complaints of the unreasonableness and ingratitude of clients, and the thousand injustices

done by the world to the honest, honourable and intelligent attorney. Unfortunately it "gave or was supposed to give indiscreet revelations as to some of his clients,"[1] and Sir George's professional career was stormy. "He was I suppose," says Mr. Leslie Stephen, "one of those very able men who have the unfortunate quality of converting any combination into which they enter into an explosive compound."[2] Sir George Stephen was asked, What was his opinion of the state of his profession with reference, in the first instance, to the persons "who are in the habit of becoming Solicitors" (so Mr. Wyse put it), and from what grade of society were they chosen. He answered:—

"I think that the attorneys, generally speaking, proceed from what I might call perhaps without offence the inferior branches of society. There are doubtless a great number of highly respectable men, respectable both from birth and connexion, and, to a certain degree from education, men of high honour, and of very extensive information. But looking at the profession generally as a class, I should say that it consisted certainly of inferior men, both in point of station and education. The attorney is generally selected for the profession either for reasons that disqualify him for the higher profession though perhaps entitled by his birth and the connexions in which he moves to be a member of the higher profession; or else he is made an attorney because it is a liberal profession after all and that into which admission is cheaper than into any other profession which claims to the caste of gentility.

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[1] Mr. Leslie Stephen's Life of Sir James Fitzjames Stephen, 1895, p. 28.

[2] p. 29.

Q.—From what class would you say they were generally selected?

A.—I should say that the Attorney was selected from three classes. Sometimes tradesmen and shopkeepers have a very extensive business arising from their book debts and from doubtful securities; and they consider that it would be worth their while to place a son in the profession in order that he may enjoy a business of that description. Merchants, for a similar reason, but with a higher class of business in view, are very frequently in the habit of placing their sons with Solicitors. Another class, I may say, consists of gentlemen of moderate means, of small and independent fortunes not adequate to sustain the expense of educating more than one son or two for the Bar or Church; if they happen to have a third or fourth, or if it so happens that one of their sons has been idle at Eton, or Winchester, or Harrow, and proves himself deficient in that kind of application which is essential to the study of the superior profession, the attorney's is still a gentleman's business, and they send him there, superseding the necessity of sending him to college, either to Oxford or Cambridge, and thereby saving expense.

Q.—*Mr. Hamilton:* You stated that solicitors or attorneys are chosen for reasons which disqualify them for the higher profession; did you in saying so refer to that want of application or other reasons?

A.—That is one of the reasons to which I allude. Then there is a third class of attorneys who come from a much lower stock. They are young men who have probably been introduced in early days, at their early boyhood, at the age of ten or twelve or thirteen, as soon as they could write, into an attorney's office, and employed as copying clerks. They pick up a great deal of practical knowledge, more especially a great deal of familiarity with the peculiar business and papers of the clients of their employer; they remain in his office probably for five or six years, or perhaps even seven or eight years, and they become of extreme value to him; and then the attorney with a view to retain them upon a moderate salary and probably with a view

of ultimately making them partners to take off the burden of his business will article them, and you may say with respect to a man of that sort that he is suckled and cradled an attorney. A very considerable number of our profession are raised from that class."

All this now seems to betray some exaggeration, and certainly it bears the date of fifty years since. One would have liked to hear Thackeray's comment. Sir George Stephen had suffered, he said, exclusion from even family dinner tables on account of his profession. For this, perhaps, and certainly for other causes, he had always disliked it; and when, in 1849, a financial reverse occurred, he went to the bar, practised for a time at Liverpool, and "at last he found it necessary to emigrate and settled at Melbourne in 1855. He found the colonists at least as perverse as the inhabitants of his native country. He wrote a 'Life of Christ' (not after the plan of Renan) intended to teach them a little Christianity, and a (so-called) life of his father which is in the main an exposition of his own services and the ingratitude of mankind. The state of Australian society seemed to him to justify his worst forebodings; and he held that the world in general was in a very bad way."[1] Unfortunately the committee made no allowance for this personal bias of their witness, and based their report on his testimony alone. The evidence given was hardly a fair exposition even of

[1] Life of Sir James Fitzjames Stephen, p. 29.

Sir George Stephen's views. "Inferior" was the word applied by the committee in almost every line to the attorneys. But Sir George in his book had repudiated with great vehemence the suggestion that the profession of a solicitor was in any way, except in legal authority, inferior to the bar. In a second edition of the "Adventures" he had scoffed for twenty pages at the opinion of a critic that counsel displayed a "visible superiority," and contended that solicitors had advanced "in social rank" relatively more than other classes; that the interval between the two branches of the profession was diminishing; that neither in birth, acquirements, literary skill, nor morals did any superiority exist. Whatever the merits of this quarrel, it was certainly the general opinion that the class of men engaged in the practice of the law had greatly improved, and was not justly subject to the censure Sir George Stephen uttered to the committee. The office boys who have obtained promotion have satisfied the judgment of at least those persons who knew them best. The children of the rectories, the younger sons of gentlemen of small independent means, are surely no bad material for professional men who need the incentive of want of income to do work which offers no other possible reward than a competence. Even that modest reward the profession did not receive; not more than one third of its members, according to Sir George Stephen's testimony, were then "earning such an income by their profession as would enable them to maintain themselves and their

families in respectability and according to their station in life." Mr. Maugham, the Secretary of the Law Society, speaking with ample opportunity of knowledge, dissented apparently from Sir George Stephen. On one point, however, professional opinion tended in the direction of Sir George's view. By the Act of 1860, power was given to the judges to exempt from the preliminary examination instituted by that Act solicitors' clerks who had been employed for ten years; and at first such exemption was not rare. The "ten-year-men" were generally unpopular; it was felt to be not unreasonable to require even from a clerk, if he desired to practise, the modicum of knowledge sufficient to pass the preliminary examination. In 1867 the Council of the Law Society saw the judges, "and it was then intimated that after the Act had been in operation for about ten years orders for exemption would only be granted in very special circumstances."[1] It is to be noted, too, that the inducement offered by Parliament to University men to join the profession by a shorter term of service, has of late been increasingly effective, and a larger proportion of graduates is constantly to be found in the list of persons applying for admission.

But Sir George had other charges to bring against his profession. Attorneys were not merely low, ignorant and impecunious, but were "not much given to social communication," and, he was sorry to have to add, they

[1] Law Society's Calendar, "Origin and Progress of the Profession of Attorney and Solicitor."

were much given to social abuse and social distrust. The root of all the evils was the system of remuneration. The solicitor, he said, was the only member of that part of the community which depends upon intellectual exertion who was not allowed to put his own estimate upon the value of his time and his ability. He proceeded with the pleasant feeling the creation of an epigram suffuses through the frame, "Now I apprehend it to be an undoubted maxim that if you pay your attorney upon the same scale or in the same form as you pay your shoe-black, you will soon find yourself obliged to employ a shoe-black for your attorney." The scales of costs were ridiculously unjust. Men of business quite appreciated the fact that taxed costs, *i. e.*, the amount legally prescribed for the attorney's remuneration, did not pay, and did not object to be charged more. "Remuneration," said another solicitor in the same connection, aptly quoting from *Love's Labour's Lost*, "Oh, that's the Latin word for three farthings."

The insufficiency of the fees allowed to solicitors for the work they themselves did was in some part redressed by allowing a profit upon the work done by their clerks. The old attorney probably employed no clerk, or only a boy to attend him and possibly to carry the bag which contained all the impedimenta of his practice. When business was done in the open air or taverns, the attorney himself did all his business. There would have been no complaints of "vagabond" attorneys if, when the attorney himself was away, his clerks had

remained to transact business at his office. But during the last century a complete change had been made. The attorney remained generally at his office to see his clients; much of the mechanical work there, and nearly all the work elsewhere, was transacted by clerks. The old theory was reversed; so far from being daily at the courts, the attorney himself rarely went except on the occasion of the trial of a cause in which he was concerned; the routine work at the offices was transacted entirely by his clerks. If the qualified solicitor had been required to take in his own person all the steps in a cause, it would have been impossible for him to live; this was made practicable only by allowing to the solicitor the same fee for the attendance of a clerk as for his own; and for copies of documents and drawing an abstract of title more than the sum he would pay for the making to his clerk, or to the law stationer, or scribe, who was the last survivor of the old business of scrivenery. It is only by the assistance of clerks that the conduct of a solicitor's business under modern conditions is possible; and this was the foundation of some of the complaints made by the eager critics of half a century ago.

The remuneration of solicitors, indeed, was the moving cause of quite a literature of pamphlets. It is curious that costs are the cause of nearly all the obloquy heaped upon solicitors, yet these costs are admitted by competent critics to be inadequate compensation for the labour done. "To live by taxed costs

you must of necessity create and multiply actions"; even Lord Brougham, an enemy of the class, had felt himself bound, in his famous speech on law reform, to admit the existence of the injustice. "The necessary consequence of not suffering an attorney to be paid what he ought to receive for certain things, is that he is driven to do a number of needless things which he knows are allowed as a matter of course; and the expense is thus increased to the client, far beyond the mere gain which the attorney derives from it." Mr. E. W. Field, probably the only solicitor whose career has been commemorated by a statue and recorded in a biography, was a reformer not less energetic in this than in other matters. "The false and mischievous principle," he said, "of paying for what is not done by way of compensation for not paying for what is done, pervades the whole frame of the law." Lord Langdale, Master of the Rolls, often expressed his dissatisfaction with the method in which costs were taxed. "We all know that, according to old established rules of taxation, solicitors are sometimes very ill-paid, and in some cases not paid at all, for very important services rendered by them to their clients";[1] and again, "The attorney and solicitor cannot live unless he perform a certain quantity of technical evolutions, for he is paid by the length of documents and number of steps in a cause, not for time occupied, nor for skill and labour employed, nor for

[1] 8 Beavan, p. 1.

responsibility incurred." But by no one were the considerations tending in favour of solicitors more cogently stated than by Mr. Joshua Williams, whose books have instructed several generations of solicitors and barristers alike. In 1857 he issued a little volume of "Letters to John Bull, Esq., on Lawyers and Law Reform," and put the question of costs in the forefront of his argument. Addressing that typical client, he says—

"If you begin by continually suspecting that a man is a rogue you go a great way to make him one. Now how do you treat your lawyer? You look upon him as a man who would clutch, if he could, every six and eightpence that you are worth; and you provide, in his case, machinery which exists in no other profession, to prevent him overcharging you. If you want a house built or repaired, you employ a builder and make the best contract with him that you can. But with all your foresight there are sure to be many little items left unprovided for, and these, as perhaps you know by experience, sometimes swell to a very considerable and unexpected sum. However, if you think you have been imposed upon, you can resist the demand and the matter is settled by a jury. It seldom, however, comes to this, for unless you have been very unfortunate in your choice, a little mutual explanation and concession satisfactorily end the matter. But with your lawyer it is otherwise; you trust him with your family secrets, with matters which, if divulged, might injure your reputation or ruin your credit, you expect him to stand by you, to think for you, to take that most disagreeable thing—trouble—off your hands, and you know by experience that rarely indeed is such a trust betrayed; and yet when you come to pay him for matters like these—matters which in their nature cannot be twisted on a reel or poured into a pint pot, the only question you ask him is, how many words he has written in your service? You set him to count thus:—This, 1; indenture, 2; made, 3; the, 4; first, 5; day, 6; of, 7; April, 8;

in, 9; the, 10; year, 11; of, 12; our, 13; Lord, 14; One, 15; thousand, 16; eight, 17; hundred, 18; and, 19; fifty, 20; seven, 21; between, 22; John, 23; Bull, 24; and so on. When he has got up to seventy-two[1] you give him a shilling and tell him to begin again, and so he does; and by the time he has got to the end of your deed, he knows how much he has a right to receive, and you are bound to pay. Now, this is not mere imagination; it is pure and simple truth. Try, if you can, to imagine anything more preposterous. You know enough of mankind to see that to pay by length must of necessity need prolixity. . . . The habit of prolixity grows like all other habits, creeps into all legal affairs, till the sense is often smothered under a multitude of words. That is one evil."

The question would naturally arise, If taxation were abolished what safeguard would exist against rapacity?

"In answer to this I can only say, that until you have the courage and good feeling to treat in all respects as an honourable man, a man to whose honour you confide all that is dear to you, you deserve to be fleeced; and fleeced you will assuredly be. Try and get rid of the foolish notion that, when a man enters the profession of the law, he leaves honour and conscience outside. Treat him as you treat everybody else."

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[1] The origin of the folio of seventy-two words seems obscure. Originally legal documents were measured by the number of sheets. Then the "folio" of seventy-two words was established as the common law measure, while in Chancery, on account of the voluminous nature of its former proceedings, the folio consisted of ninety words, a length still retained in the Probate Division. The Chancery folio was not reduced without a struggle. Lord St. Leonards in 1852 made an order reducing the costs of drawing receivers' accounts, bills of costs, &c., by more than one half. It cost the solicitor more to have his documents copied than he was allowed for preparing them, and loud protests were raised. The solicitors memorialised the Chancellor, but in vain. The law stationers were more successful, and in 1854 Lord Cranworth reduced the folio in Chancery from ninety to seventy-two words: and to the special delight of the "scribes" each figure was thenceforth to count as a word.

The conservatism of the gentleman to whom this cogent argument was addressed resisted this and similar appeals. Indeed, solicitors themselves have almost ceased to struggle against an injustice which seems impregnably established, and has been a rule of the court since costs were first allowed. Some agitation still exists, but this against an evil which is felt not by the solicitor but by the client. Since the costs which a successful litigant can recover from his defeated opponent are always less than the costs which, according to the lowest reckoning, are properly incurred on his behalf, he has—although declared by the courts to be in the right—to pay part of the costs of the struggle. The grievance of these "solicitor and client costs" is a going concern, and may one day be remedied.[1] But the general principle of taxation no one now contests.

Some changes have been made. A special agreement by which solicitor and client fix a price for the work to be done was once impossible: such a contract may now be made subject to the observance of certain requirements and to a possible revision by a taxing master. Interest may even be recovered by the solicitors on fees and disbursements in some circumstances; but the greatest change was made in 1882, when the principle

[1] In the county courts a short but unjust remedy has been found. All charges, except those allowed against an opponent, have been abolished, even as against the client. A solicitor practising in the county courts who did no more for his client than he is paid to do would have an action brought against him for negligence every week.

of remuneration in conveyancing matters was changed, and the fee upon sales, mortgages, and leases made to bear a fixed proportion to the value of the property affected. This had been Mr. Field's favourite plan: he would have made even the reward for conducting litigation depend on the amount involved. In that opinion he stood alone; certainly he failed to convince his fellow solicitors. But in conveyancing business, to the client at least, the argument seems unanswerable that the fee he is to pay his solicitor should bear some ascertainable proportion to the price he is to pay or receive for land or house. Before the change of law, efforts had been made to establish by voluntary effort some such sliding scale. The new system has undoubtedly been successful, and is little likely to be disturbed; and it was at the same time made possible, by Lord Cairns' Conveyancing Acts, to discontinue the use of covenants for title, which had been the cause of much of the prolixity of legal documents. Power was, in 1882, reserved to the solicitor to elect to be paid under the old system of charging item by item for the work actually done, but such an election is rarely made. The certainty of the new or "scale" charges is too great an advantage to the client to be denied. The effect of the change has been at times to increase, at others to diminish, the solicitor's remuneration. In small transactions, where the trouble is frequently greater than in transactions involving large sums, the

fixed fee is often inadequate; in the large transactions the professional reward may often be more than would have been previously payable, so that rough justice is done. The influential solicitor accustomed to deal with considerable properties is unlikely to complain.

For the numerous other classes of work which they transact, solicitors must still deliver a bill under the old system. Small alterations have been made from time to time in the scale of fees little to their advantage (though the old-time "termly fee" of 3*s.* 4*d.* has grown to 15*s.*); and now and again some device simplifying procedure naturally and properly involves the abolition of fees corresponding with the work no longer done. But the scales of charges prescribed are in some matters notoriously unfair. If a solicitor himself takes the trouble to attend an appointment before a judge in chambers, he receives, perhaps after waiting some hours, a fee of 6*s.* 8*d.*; if he instructs counsel to attend, and is himself represented by a junior clerk, his fee for the attendance is the same, and he receives several further fees for copies of documents and attendances on counsel. In the earlier stages of an action no step is more important than the inspection of documents in the possession of the opponent. For this inspection no fee is chargeable in the Chancery Division against the defeated party. It is in such matters of detail that a reformer content to labour without prospect of popular recognition may still find work to his hand.

That solicitors' costs are or will ever be regarded as other than excessive is extremely improbable. To accuse a lawyer of rapacity is to utter a time-honoured sentiment—to raise the laugh that comes pleasantly at the sound of a familiar jest. The charge is not often made by the persons most familiar with the law, nor often made by anyone with complete seriousness; but it undoubtedly expresses one of our traditional national beliefs. In this matter, solicitors no doubt share with members of other professions the popular reprehension. Barristers, indeed, escape odium, for their fees are paid by the solicitors, who alone bear the burden of the client's dissatisfaction. But doctors, whose work comes even nearer to men's bosoms than solicitors' to their business, do not escape complaint; proverbs about shutting the door in the doctor's face take small account of professional feelings. And the clergyman's tithes and pew rents have aroused feelings more violent than long bills of costs. It is the length of solicitors' bills which is the main part of the grievance; yet here the blame is wrongly placed. The tedious task of preparing, and the cost of copying a long bill can be to no man's taste. It is the Act of Parliament requiring their delivery which demands the extreme particularity of charge, written with only usual and familiar abbreviations in the English tongue. It has been suggested that solicitors should follow the modern practice of medical men, and deliver, at least in the first instance,

merely a memorandum of the total amount of their charges between given dates, reserving until it is demanded the detailed statement which the law still requires; and possibly in that way lies the escape from a reproach levelled against the profession since the days of the Georges.

CHAPTER VIII.

THE PRESENT POSITION OF SOLICITORS.

Costs have been most effectually reduced by reforms not in the method of remuneration, but in the law itself. The great changes made in the period following the first Reform Act recast the law of real property, and made into mere curiosities for "the law's lumber room" what had long seemed the structure and substance of the law itself. The Common Law Procedure Acts simplified the system of pleading, which had become a marvel of technicality, an entertaining but most unprofitable science; and extended the power of the courts to ascertain the merits of a case without resort to Chancery, and to adapt the remedy they could grant to the injury sustained. In Chancery the reform effected, though not completed till later, was even more radical; and one change in procedure tended to effect an improvement in the status of solicitors.

In 1842 there was consummated the long-continued effort to abolish the useless and expensive office of the Six Clerks in Chancery, and solicitors were allowed to become in name, as they had long been in fact, the legal agents of the litigants in that court. The efforts of

the reformers under the Commonwealth had resulted in the appointment of the Sixty Clerks, who were intended to take the place originally filled by the Six as attorneys for all persons having business in Chancery. The Six Clerks, in turn abolished and restored, long remained at issue with the Sixty, till a compromise was effected between the parties by an order of 1668, which made the Sixty liable to pay the Six their accustomed fees, and left the Sixty the attorneys of the court. This order long remained the charter of the two classes. So late as 1798 the Six appealed to it to compel the Sixty (in spite of a previous system of compounding for their dues) to pay fees for which the Sixty themselves had given credit to solicitors.[1] But the Sixty, also, had soon ceased to represent the parties; solicitors grew up who saw and advised the client and transacted the business on their behalf. The labour and responsibility were theirs, the client was concerned with them alone. Their existence had long been officially recognized, but they were not allowed to practise in their own names; every step they took, every bill and answer they filed, was taken and filed in the name of the "sworn clerk" whom they employed. The Six Clerks existed only to collect fees by themselves or their deputies, selling their posts when they retired for large sums; the Sworn Clerks taxed the costs as assistants to the Masters and kept the records of the court. They

[1] *Ex parte The Six Clerks*, 3 Ves. 589.

could expedite or delay causes, "and it was therefore deemed advisable by solicitors to take a certain number of office copies of documents, which were otherwise unnecessary, that the profit on the copying might serve the purpose of the 'expedition money' which the orders of the eighteenth-century Chancellors had suppressed." [1] There were swarms of other officials supported, of course, by the litigants; the procedure, designed no doubt to do perfect justice to all persons affected, was, because of its cumbrousness, shameful dilatoriness and expense, a miracle of ineptitude in most of the causes; the delays in giving judgment were a public scandal. Yet Lord Eldon "attributed most of the failures of the court to the ignorance and misdeeds of the solicitors, and he expressed regret that they had ever been admitted to practise in it at all." [2]

Lord Brougham, in 1832, suspended the appointment of further Six Clerks till their number was reduced to two, and from that time by various statutes the practice of the court was gradually reformed. But it was reserved for a solicitor to effect the actual change. In 1840 a pamphlet by Mr. E. W. Field exposed the waste of money which the offices of the Six and Sixty Clerks occasioned. The pamphlet attracted much attention; it was followed by other articles from the same pen and supported by personal interviews and "conversation

[1] Kerby, History of Equity, p. 268.
[2] *Ibid.*, p. 274.

with persons of influence,"[1] and mainly by his exertions the reform was accomplished. The 5 & 6 Vict. c. 103 abolished the offices of the Six Clerks, "along with a host of other useless officials," and solicitors were at length allowed to do in their own names the work they had previously been compelled to do through others. The reform of Chancery practice was, perhaps, the most important legal reform of the century; and though the greater glory of the reform belongs to the chancellors, solicitors may justly claim to have done their share to effect "the difference between the organized failure of our judicial institutions in the first quarter of this century and their comparative success in the fourth."[2]

Nor was the Chancery Court the only court thrown open to solicitors, though it was by far the greatest. There had long existed various courts having local jurisdiction, and in these a limited number of attorneys only were allowed to practise. In the Mayor's Court, London, *e.g.*, there were but four, and these were actually "officers of the court" performing various civic duties in addition to their strictly professional work.[3] In the Southwark Court of Record there were three attorneys and two counsel. All these were in time

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[1] Edwin Wilkins Field: a memorial sketch. By Thomas Sadleir, Ph. D., 1872.

[2] Kerby, History of Equity, p. 281.

[3] Pulling's Law and Customs of the City of London, pp. 84, 122, 167, 199.

thrown open to all solicitors on signing the roll.[1] Another court, the Palace, served only by a few monopolists, gained an unfortunate immortality by a case which roused the ire of Thackeray.

"The natur of this Court
My hindignation riles,
A few fat legal spiders
Here set and spin their viles;
To rob the town theyr privlege is
In a hayrea of twelve miles.

* * * * * *

"Four Counsel in this Court
Misnamed of Justice—sits;
These lawyers owes their places to
Their money, not their wits;
And there's six attornies under them,
As here their living gits.

"These lawyers, six and four,
Was a livin at their ease,
A sending of their writs about,
And droring in the fees,
When there erose a cirkimstance
As is like to make a breeze."

The breeze in time blew the court away; it was abolished in 1849, together with the Court of the Marshalsea. "Hapless is he," says Mr. Gladstone, "on whose head the world discharges the vials of its angry virtue; and such is commonly the case with the last and detected usufructuary of a golden abuse which has outlived its time." This abuse, perhaps, was not so very golden; but

[1] But it is believed no plaint has been issued in the Southwark Court for many years.

the indignation was not the less vehement or effective. "There is always something a little ludicrous about the spectacle of an author in pursuit of his legal remedies," says Mr. Birrell; but a popular novelist has a power which may be so used as to make the lawyers look ridiculous. It is fortunate for the citizens of London and Salford that no novelist fell foul of the Mayor's Court or the Court of Passage.

It was by the institution of local courts that the law reformers destroyed one source of complaint long made against the law, the excessive amount of the costs of actions in proportion to the sums involved. The early system of judicature in England had provided ample means of disposing of small money claims, but these had fallen into disuse, and it was in the king's courts that nearly all demands were made. The Act of Elizabeth[1] had been ineffective, the local courts deserted. The attorneys no doubt were blamed, but the litigants themselves insisted on going to the superior courts. "Most men are more interested in their law suits than in anything else," remarks Mr. Bagehot, and no man likes to be told his case is not important enough for the best judges to determine it. John Bull still refused to be tried by piepowders. In 1846, however, in spite of the institution of a hundred Courts of Conscience or Courts of Request for dealing with small debt cases, there was felt to be need for a general system of local

[1] See p. 37.

courts; and by the County Courts Act such tribunals were established throughout the country. To these courts, whose jurisdiction has continually been enlarged, small cases, and some cases which would not formerly have been thought small, have been effectually confined by provisions that no costs should be recovered in the superior courts in actions which the inferior court was competent to entertain. So ended a matter which had long been the subject of complaint in and out of Parliament.

The professional remuneration allowed in the county courts is restricted more narrowly than the jurisdiction, but, on the other hand, solicitors have in these courts been placed on an equality with the bar, and there both have equal right of audience. In county courts and police courts, solicitors may act as advocates. In bankruptcy they have a similar right, and since the transference of bankruptcy jurisdiction to the Queen's Bench Division, the voices of solicitors may, in that class of business, be raised even in the High Court of Justice itself.

It was a suggestion that this right should be universal, that the attorney as well as the barrister should everywhere have the right to act as an advocate, which led to one of the most strenuous legal controversies of the century, at times recalling in its bitterness the day when the unfortunate attorney was haled over the bar in the time of the Commonwealth. Amalgamation has for more than fifty years been a vexed question, never,

indeed, having a majority in its favour, but never being without some ardent advocates.

In 1846 Mr. Field read a paper before the Metropolitan and Provincial Law Association in which he inveighed against the exclusion of attorneys from the bar, and argued that here, as in the United States and the Colonies, every lawyer should have the right to plead in court and address the jury. He soon found support; the sense of injustice to the profession in its exclusion from all judicial appointments had long been felt by solicitors; they were "a proscribed class." "The present arrangement of the legal profession cuts off from a fair career one whole branch of its members. Attorneys are allowed to grow rich, but they are allowed no other prize of legal success. There is, perhaps, no other profession pursued by persons in the position of gentlemen which offers no public prizes as a reward for eminence." The *Spectator* agreed; "the injustice of excluding attorneys from the chief legal appointments is no doubt felt by them alone, but it is none the less real, and it carries with it a diminution of social status which is a clog upon the whole of that branch of the profession." Lord Hannen in 1868, at a meeting of the Solicitors' Benevolent Association, spoke in the same sense. "There is between the duties of an advocate and attorney no sharp dividing line, the duties merge into one another, and a man who begins his career does not know until he has been practising for years for which he may have the greatest fitness. . . . . It would be well to leave a man to find

this out from the opportunities that may arise of calling forth the particular qualities that are in him, and so leave it to such occasions to develop whether or not he has a better opportunity of carrying on the business of a solicitor than the profession of an advocate." Lord Hatherley, too, would have rejoiced to see the barrier which separated the two branches of the profession broken down. An attempt was made to show that the two branches of the profession had been, in fact, at one time united, and that the attorney had had, and had been improperly deprived of, the right to address the court. This was, of course, an argument for solicitors only; the real force of the agitation lay in the disadvantage to the public which its supporters believed they perceived in the separation of the two branches. It was argued that the division of functions increased expense and decreased efficiency. The attorney who knew the case thoroughly was not allowed to plead it; the man who could be heard sometimes did not read his brief. Moreover, the dual control fostered litigation. Counsel might have advised that an action, which in the end was unsuccessful, should be brought; but he was remote from the client, secluded in his chambers. The attorney was at hand to be blamed, but he had acted on counsel's opinion, and was not responsible. "We should have better barristers, too," said Mr. Bagehot,[1] "Now a man cannot go to the Bar

[1] "Bad Lawyers or Good," Literary Studies, III. 278.

except he has some peculiar 'connection' or unless he has money enough to keep him in idleness for years. But if he could practise on small attorneys' work, he might live till he has made his talents known. And we should have infinitely better attorneys, for they would have a career and a future before them, which now they have not. It is very hard that the want of a few hundred pounds should *by law* degrade a man for life, and very bad for the public that the highest energies of the sort of lawyers the public see most of should be for ever depressed by a despotic and unnecessary obstacle. But I do not care much about the legal profession; at least I cannot so much care; my principal anxiety is for the clients and the public. And because these artificial hedges cramp and hurt them, I hope to see them swept away." Some sense of a personal grievance may have influenced the agitators. The attorneys were constantly referred to as "the inferior branch" of the profession; their social status was lower. "If both branches of the profession were equally educated, there is no earthly reason why the social status of a solicitor should not be fully equal to that of a barrister," Mr. Joshua Williams had said. To some attorneys it seemed that the condition had been fulfilled, but that the equality was still not recognised; and from time to time they detected in the demeanour of the bar reminders of the old inferiority.

The argument on the other side was simple; so far as the claim came from attorneys, it was due to greed and pride; so far as it came from the public, it was due

to mistake. The solicitor who asked for the right to plead was "an opulent and successful country solicitor annoyed to see a young barrister from London take precedence over him, and eligible to offices from which he was excluded." His suggestions of injustice were "the sorrowful sighings of aggrieved opulence, and the murmurs of repressed provincial self-consequence."[1] As to the supposed benefit to the public, the experience of centuries proved that none would follow. The system of allowing attorneys to plead had answered in the United States and the Colonies, "and in a large territory with a sparse population;" but even in the United States, in effect, there was separation, for one partner prepared the case and another argued it in court.[2] And in England "the experience of centuries has proved that it is better that the attorneys who form the administrative branch of the profession shall prepare out of court the case which the barristers shall argue in it."

The discussion was embittered by its combination with that on legal education. Lord Selborne proposed that the Inns of Court should be made "bodies politic" or corporations, their funds appropriated, or, as the bar said, confiscated, for the purposes of improved legal education, and that a new legal University should be

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[1] Quarterly Review, January, 1875.

[2] Mr. Bagehot rejoined that this was a natural division instead of an arbitrary one; and, at any rate, if you lost your case you could scold both partners.

constituted, at which students for both branches of the profession should be pupils together. But the bar was determined that its students should not be educated in common with articled clerks, and especially resented the attempt to reconstitute the Inns of Court. For a time when, at the passing of the Judicature Acts, the whole legal system of the country was thrown into the melting-pot and the fusion of Law and Equity was achieved, there seemed a possibility that amalgamation also might become a fact. But while the bar was wholly adverse the solicitors were not united in support of the plan. "The main body of the eminent London solicitors" held aloof from the movement; and, indeed, men grown or growing old in the discharge of the accustomed duties of solicitors were not likely to desire the fresh and onerous task of advocacy. The average solicitor is probably as able as the average barrister, and would conduct cases in court with as much propriety and, after practice, with as much effect.[1] But

[1] The number of solicitors and their clerks who have gone to the bar must be small compared with the aggregate of students called; but a large proportion of them have been successful. Mr. Baron Garrow, Mr. Baron Wood, Mr. Baron Hullock, Mr. Justice Holroyd, Mr. Justice Hayes, had been articled clerks, and Lord Gifford, Lord Chief Justice of the Common Pleas; Lord Wynford is said to have been articled; Chief Baron Thompson, Sir William Grant, and Lord Tenterden were for a time in solicitors' offices. Lord Hardwicke and Lord Thurlow were articled clerks; Lord Kenyon, Sir F. Buller, and Sir Samuel Romilly duly served under articles. Lord Macclesfield actually practised as an attorney; so did Lord Truro, successively Chief Justice and Lord Chancellor, and in more recent times Lord Field, Mr. Justice Manisty, and Lord Justice Lush; Lord Russell of Killowen himself was upon the roll of Irish solicitors; and this probably does not exhaust the list.

advocacy is work of a special kind, demanding for success constant and undivided attention, and in itself contains more than one man may accomplish. For the bar is, in effect, not one but several; and though the dividing lines are not rigid, there is a Chancery bar, a Common Law bar, a Parliamentary bar, a bar attached to the Criminal Courts, while knowledge further specialised gives to a few gentlemen a monopoly in patent actions, and in Admiralty and other distinct classes of litigation. The mental habits solicitors acquire in their offices would not assist them in court. The Council of the Law Society, consisting of the heads of large and prosperous firms—vigorous, no doubt, in defence of interests already acquired, and gratuitously devoting infinite time and trouble to the work—were the last men to advocate so revolutionary a change. It was the young solicitors, eager to get more work to do, and to fight their way to an adequate income, rather than the well-to-do, successful ones who desired the change. But in time most of even these reformers accepted the limitations attached to their profession, their nature was subdued to what it worked in, and the agitation slackened.[1] The grant of greater facilities for the call of solicitors to the bar further diminished its force. It has never quite ceased; but, in spite of the strenuous advocacy of Sir Edward Clarke, it seems certain that the twentieth century will begin, and it may end, with barristers in

[1] See, *e.g.*, the proceedings at the Annual Provincial Meeting of the Law Society in 1888.

sole possession of the right of audience in the superior courts, and solicitors still sitting (as Dickens said) silent, like Truth, at the bottom of the well.

The Quarterly Reviewer was of opinion that "solicitors would do well if, instead of seeking to intrude into the domain of the Bar, they were to look to the preservation of their own business and exclusive rights, which are in more danger than some imagine. If they demand free trade in advocacy, let them remember that there is the new class of accountants and debt collectors, who are striving to obtain free trade in the instituting and conduct of causes, and to infringe on the exclusive privileges of the solicitors." The debt collectors (and, it may be added, the police inspectors) do often take charge of cases in court which solicitors should in strictness conduct; but in the county courts the matter is in the hands of the judges, not all of whom favour the pretensions of solicitors, and whose administration of the law may be, without reproof, as roguish a thing as that equity which depended on the length of the Chancellor's foot. It is possible, no doubt, that the work of accountancy might have been kept for solicitors; for much of the work accountants do merges into the solicitors', and involves a general knowledge of mercantile law. But this would have involved the abandonment of that dislike of figures and incapacity to deal with accounts which have become almost a professional tradition. It is too late, now that accountancy

is a recognized profession, to hope to regain the lost ground.

It seems impossible to foresee the shifting of the lines of division between different vocations; it is not always easy, even after the event, to explain the fixing of the frontier. There seems no reason why solicitors should not be also estate agents and auctioneers, except that it has happened otherwise. In many ways the solicitor is now almost as much a man of business as a man of law. But if ground has been lost which might have been retained there is one small consolation. All the new rival professions have adopted the terminology of the law: they all have "clients" instead of customers. This sincere flattery is the one compliment the world has ever paid to attorneys.

Solicitors were, however, sufficiently alive to their interests to desire a codification of the law relating to themselves, then scattered over seventy Acts of Parliament; and, thanks to their organization, at that time still comparatively new, in the Law Society, they were able to obtain an unwontedly respectful hearing for their views. In 1843, Lord Langdale, Master of the Rolls, at their instance, introduced a consolidating Bill; by it the office of Registrar of Solicitors was created, and the Law Society, pending some other appointment by the judges which has never been made, was selected to discharge the duties of the office.

The special taxation borne by attorneys was now admitted to be unduly heavy, and, by 1851, when it

yielded 92,388*l.*,[1] it was felt that remission was possible. In 1850, a Bill for the abolition of the annual duty had obtained a majority in the House of Commons, and next year a change was made. It is not surprising that the attorneys and the Chancellor of the Exchequer took different views of the form which the remission should assume. Attorneys and solicitors desired the total abolition of the annual duty, but did not wish to make it easier for fresh rivals to be introduced into the profession. They would, therefore, have seen with equanimity the stamp on articles of clerkship remain unaltered. But the Chancellor did not desire to limit the numbers of a class so profitable to the Treasury. In the end Mr. Gladstone fixed a uniform duty of 80*l.* on articles, and reduced the annual tax to 9*l.* in London and 6*l.* elsewhere. The solicitors were not satisfied, and for some years an agitation was maintained for the total repeal of "the hateful tax." But pressure was put on adherents of the Government not to support the Bill, and though a majority was obtained for it from time to time, it never passed, and the agitation ultimately subsided. On one occasion a choice was presented to the House of Commons between the abolition of the duty on advertisements and that on the practitioners. The advertiser obtained the prize of beauty, and the solicitors' certificate duty has remained unaltered for more than forty years.

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[1] Dowell, History of Taxes and Taxation, II. 217.

While the debates on education and amalgamation were still raging, the work of the attorney and solicitor was made more easy by the codification of the rules of procedure. The Common Law Procedure Acts reorganised the practice at common law, and in 1860 there was issued, under the authority of Lord Campbell, a table of Consolidated Orders, which were in effect a code of procedure in equity. "The publication of these orders and the abrogation, with some unimportant exceptions, of all the earlier general orders of the court—'bringing order out of confusion and harmony out of discord . . . . by separating those orders which were subsisting from a mass of others which had become defunct'—was well described by the consolidators as 'likely to effect a great and unmixed good.' It comprised about six hundred rules, dating, in some instances, from as far back as the sixteenth century, and it, for the first time in the history of Chancery, presented a consistent, complete, and authoritative statement of the practice as settled by express orders."[1] Indeed, the multiplication of orders and rules has made such a code indispensable. The *Practick Part of the Law* has grown into the huge *Annual Practice* interpreted by the stout familiar volumes of Daniell and Archbold.

One change of practice was obtained by the solicitors alone, and in spite of the opposition of the bar. It was

[1] Kerby, History of Equity, p. 287.

then the custom in the Chancery Courts, as it is still in common law, for the "leaders" to practise in all the courts indifferently. In consequence, clients were never sure that the Q.C. who had been instructed would attend, and solicitors "were obliged to employ four or five leaders in every stage of every cause in Chancery," because they "never could reckon with certainty on the attendance of even one." The solicitors combined, and declared they would give no brief to any counsel who would not confine himself to one court. The bar resented the suggestion, and there was angry talk, but the demand was felt to be reasonable, and Mr. Shadwell, afterwards Vice-Chancellor, was first to declare he would practise in one court only. This example was gradually followed, and the convenient practice soon became, and still remains, firmly established in the Chancery Courts.[1]

Another change, tending greatly to the solicitors' convenience, was to be made, not in the letter, but in the envelope of the law. Solicitors have taken an active part in many legal reforms, but in none, perhaps, has their share in the ultimate achievement been greater than in the movement for the concentration of the Courts of Justice. Some of these were at Westminster, some in Lincoln's Inn, some in Chancery Lane, and their offices were scattered throughout the whole legal district. So early as 1835, a committee of the Law

[1] Stephen, Adventures of an Attorney, p. 231.

Society pointed out the inconveniences of the situation and construction of the courts at Westminster, and suggested their removal to Lincoln's Inn. The reception of the proposal was discouraging, but in 1840 "public opinion had gradually matured in favour of the removal of the courts," and in that year a petition from fifteen hundred London solicitors was presented to Parliament in favour of the scheme; the Lord Chancellor and Attorney-General favourably received a deputation, and a plan of the building proposed to be erected in Lincoln's Inn Fields was prepared and exhibited. In 1841 and 1842 a Select Committee of the House of Commons was appointed and evidence taken; Mr. Field was examined, and he pointed out that uniformity of procedure, as well as the convenience arising from contiguity, would probably be secured by the adoption of the proposal. "It has struck me," he said, "that with reference to the monstrous mass of evil to be removed by improvements in procedure, a great deal more is to be done by arrangements almost mechanical in their nature, and comparatively less by arrangements as to forms, pleadings, &c., than would at first be imagined; and that the mechanical arrangement which is the most important is the concentration of the courts and the offices. Of course the object of every alteration to be made in procedure is that the work may be done quicker, and cheaper, and better, both in court by the officers of the court and by solicitors and counsel; and my belief is that, in every

respect, the concentration of the courts and offices would operate towards bringing out these results, and that these results cannot be completely brought out without this concentration." Subsequently the difficulties to be overcome increased; in 1846 a fresh site, between Carey Street and the Strand was suggested, and this seemed to the Law Society the best, was advocated by them, and ultimately chosen. But the reform was not completed "until after a further and sustained agitation extending over a period of twenty-four years. During the whole of that time the Society left no stone unturned to bring the matter to a satisfactory issue. They petitioned; they went in deputation; they made suggestions; they pointed the way out of innumerable real and imaginary difficulties which were raised; they combated opposition, disinclination and indifference; they roused other forces to action to support their own; and finally, in the year 1869, they undertook the whole burden of a severe and comprehensive contest before a Select Committee of the House of Commons as to the relative merits of the Carey Street site and of a site on the Thames Embankment which was suggested and vigorously supported after the Acts of Parliament for acquiring the Carey Street site had been passed, the land purchased, the site partially cleared, and the architect's design for the building on that site selected."[1] The Acts authorising the concentration were passed in 1865, and a commission was then appointed to approve a plan. Of this Mr. Field

[1] Introduction to the Law Society's Calendar.

served as honorary secretary, and, said Lord Selborne, he "was of incalculable service at all the meetings which took place. In everything that was done he was the most active and useful man of all, perhaps, who were engaged in doing it." It was not until the end of 1882 that the long struggle ended in the opening of the new courts.

A change more particularly affecting the "lower branch" was made by the Judicature Acts. The attorney-at-law, after so long and troubled a career, was to disappear from our legal system. In so considerable a period of time the divisions of almost all trades had been re-arranged; only those occupations which are concerned with the absolute necessaries of life retained the old names and old functions. Of Chaucer's joyous company which started from the Tabard when the attorney's profession was young, more than half were of occupations now forgotten or known by different names. The miller, the plowman, the doctor of physic, the carpenter, are still with us, though part of the carpenter's work has been made into the separate trade of the builder; the monk and shipman have changed their titles; the places of the webbe and the tapiser have been taken by machinery; the reve, the manciple, the franklin, and even the serjeant-at-law are gone. Three-fourths of the names of the three thousand trades into which commerce is divided in the London Directory would have seemed strange to the men of the fourteenth

century. The attorney's duties, it has been seen, had been much enlarged; and the name itself, once deemed superior to that of solicitor, had lost all trace of professional superiority since attorneys and solicitors had been governed by the same law. The restrictions which had confined attorneys to particular courts had been abolished, and the same men were almost always both attorneys and solicitors. The proper descriptions were still "attorney-at-law" and "solicitor in equity," but the odium which, by long and persistent abuse, had been attached to the profession clung more closely to the older title. The Court of Chancery had been the object of vehement invective, but among the practitioners it was of attorneys and not solicitors that the hardest things were said. "Gracious Heaven!" exclaimed that exemplar of the gentle life, William Cobbett, "if I am doomed to be wretched, bury me beneath Iceland snows, and let me feed on blubber—stretch me under the burning line, and deny me propitious dews,—nay, if it be thy will, suffocate me with the infected and pestilential air of a democrat's club-room; but save me, whatever you do, save me from the desk of an attorney!" Carlyle used the word as a term of abuse. Attorneys and law beagles hunted "ravenous on this earth." He spoke of "attorney cunning," and pleasantly coupled "attorneyism and the swindler element." The attorneys were used to criticism, but no man likes reiterated abuse which he thinks undeserved, and most attorneys had taken refuge in the gentler name of solicitor. The

author of *The Three Tours of Dr. Syntax* had long before observed this tendency.[1]

> "And thus the most opprobrious fame
> Attends upon the attorney's name,
> Nay these professors seem ashamed
> To have their legal title named;
> Unless my observation errs,
> They're all become solicitors."

Some judges reprehended this conduct as absurd; some stalwarts in the profession declined thus to escape criticism; Mr. Samuel Warren, lecturing to the Law Society, thought they should give the preference to the good old Saxon word, attorney; but the change was made, and at last recognised by Parliament itself. The fusion of law and equity effected by the Judicature Act was accompanied by the merger of the attorney and solicitor; the "good old Saxon word" was abolished, and from 2nd November, 1874, all members of the profession were to be designated solicitors. The serjeants survived the attorneys for a few months.

The more recent history of solicitors has been uneventful, but has been marked by the completion of the process by which their powers and duties have been enlarged. By the Legal Practitioners Act, 1876, and the Solicitors Act, 1877, solicitors became entitled to practise in any ecclesiastical court, a privilege which the decline of ecclesiastical litigation makes less important; but from the constitution of the Probate Court in 1857 they had

[1] The English Dance of Death, 1815, 1816.

been able to prove wills and take other necessary proceedings in reference to the estate of deceased persons. During the earlier periods of our law the proctors alone had had the right to do this; now the proctors disappeared (being duly compensated) leaving only the fragrant memory of Messrs. Spenlow and Jorkins behind. The Admiralty Court also was thrown open to solicitors. Only one of the professions allied to the solicitor's—the notary's—still resists the tendency which, in spite of unpopularity, has continually enlarged the limits of the solicitor's practice, and retains an independent existence. And this exception has not been maintained without protest. In the opinion of solicitors it would be convenient and proper to combine the notary's calling with their own. The power of admitting notaries has, since the Reformation, been vested, quaintly enough considering the notary's duties, in the Archbishop of Canterbury, while in London the Scriveners' Company also exercises some authority. In 1884 a Bill was introduced at the instance of the Law Society, to transfer these powers to the Society, and to enable all solicitors to discharge notarial functions. It might well have passed; only forty-eight notaries, it was said, existed, and honourable terms were offered to them. But the hostility of Earl Cairns was fatal, and the House of Lords at his instigation threw out the Bill.

Another profession with duties which might have been entrusted to solicitors remains open: anyone may be a parliamentary agent. While the practitioner in the

lowest court must be examined, articled, and admitted, anyone may act in the promotion of, or opposition to, Bills in the High Court of Parliament. It was once proposed that such agency should be limited to barristers and solicitors; but a joint committee of the two Houses in 1875 demurred to this suggestion. The legal education of barristers and solicitors did not involve any knowledge of Parliamentary procedure: the committee, therefore, recommended a special examination to test the fitness of applicants. But this suggestion was not adopted by either House, and though the agents who practise in Parliament are, no doubt, generally solicitors, solicitors have not, as such, any exclusive right.

Occasionally some professional grievance, such as the disability to become justice of the peace in the counties, has been removed; solicitors have been given a voice on the committee which makes rules of procedure in the Supreme Court; and the strange relations with the bar have been a little modified. "A barrister is to an attorney what a peer is to a law stationer," said a solicitor, in the bitterness of his heart, sixty years ago; so hostile were the Benchers that it was made almost impossible for a solicitor to go to the bar, three years' suspension of practice being required. A rule made in 1762 had required two years' interval, but in 1825, consequent on the rapid success of Mr. Wilde, afterwards Lord Truro, who had been a solicitor, the Benchers required a third year of idleness. This period was afterwards reduced to one year, a time still too long

for the man whose income depends on his profession. Barristers of five years' standing had been allowed, by consent of the solicitors, to transfer themselves to the other branch of the profession on passing the Final Examination; and by a recent regulation a solicitor, on giving twelve months' notice of his intention and passing the necessary examinations, may now be called without any interval. Thus one at least of the old grievances has been destroyed.

But other dangers have arisen, and the policy of Parliament towards the profession has entered on its fourth stage. The policy of limiting the numbers of its members, the policy of regulating its practice (combined with a special taxation not unduly light), the policy of educating its members, had all, apparently, reached completion. The results had been satisfactory. The profession had been thoroughly reorganised, and had become one to which no man need be ashamed to belong. Having achieved this, the legislature adopted its fourth policy, which is to take away from solicitors their business and emoluments, and give them to officials of the state. The history of the past ten years has been memorable for the transference of the work arising from the bankruptcy of men and companies to civil servants; and by a persistent effort to treat in the same way all those numerous and important transactions styled conveyancing which arise from the transfer or mortgage of landed property. It is to these proposed changes in the law, and to others not so directly

affecting themselves, but specially within the scope of their professional knowledge, that the energies of solicitors have of late been devoted. Few of the many changes of the substantive law have been made without their opinion being ascertained. The Settled Land Acts excepted, the Conveyancing Acts of 1881 and 1882 are, perhaps, the most important law reforms made during the last quarter of a century. "It may be recorded in these pages with legitimate pride," says the official record of the Incorporated Law Society,[1] "that the great changes, both in principle and practice, effected by these measures, were modelled upon views of which the first public expression emanated from a member of the Society," Mr. N. T. Lawrence, president in 1879. And it is said that only upon the intercession of Sir Henry Fowler, who enjoys the distinction, unique among solicitors, of having attained the rank of a Cabinet Minister, were the Bills allowed to pass upon the change of government which occurred while the first Act was under consideration in Parliament.

One reform made by the Solicitors Act of 1888, denotes a change of attitude by the legislature worthy of notice. Under the old practice, when complaint was made against a solicitor with a view to his being struck off the roll, an inquiry was held by one of the Masters of the court, and on his report the judges acted. By the Act of 1888 the duty of making this inquiry and report was committed to the solicitors themselves, as

[1] Calendar, Introduction, p. 28.

represented by the Law Society. The Parliaments of the Georges would have listened astounded to such a proposition; the change which has gradually been effected in the popular estimation of the profession, could hardly be more clearly demonstrated. And it may be claimed that the confidence had been deserved, that throughout its career the Law Society has been mainly concerned, in the words used in 1739, for "the benefit of suitors and the honour of the profession."

Do not, said Mr. Samuel Warren forty years ago, make your son an attorney. The examinations, he pointed out, are difficult, the education expensive, the profession overcrowded. "Nor must the fact be overlooked that the tendency of our legislation has been, and will continue to be, to simplify legal procedure as much as possible; to lower the scale of fees payable to attorneys and solicitors, and even to dispense in many instances with the necessity for employing professional men at all." The warning has not been heeded, and the cry against the overcrowding of the profession has not ceased. It is curious that never since the time of Edward I. has there been a period when that complaint has not been made. Yet the attractions possessed by the calling must to most men seem small. The work, it is true, is often not unpleasant; it has variety and sufficient intellectual exertion to vary the drudgery of routine; it affords constant opportunty of rendering services in themselves a pleasure. But the rewards of

which it affords a prospect are few. The utmost that a solicitor can possibly hope to achieve is a competence, and not all solicitors do this; few become rich, and extremely few become rich as the result of professional exertions alone. That very frequently poverty and not a competence is the result of labour, the records of the Solicitors' Benevolent Association will show. To expect a solicitor to abandon hope of moderate means would be to ask a virtue alien to the times. Yet the advice given by "The Compleat Solicitor" three hundred years ago remains the most salient counsel for the profession; the practitioner must limit his desire for gain and possess himself with a calm content.

But if wealth be not achieved, there is little consolation. All roads to honour and professional preferment are closed. The appointments which a solicitor may hold are few.[1] Solicitors in such matters are still, in the words familiar fifty years ago, "a proscribed class." There are distinguished exceptions, but professional occupations generally make it difficult for a solicitor to enter Parliament early enough in life for political distinction to be still possible, and leave little leisure for literary or other non-professional work. Yet, in spite of this, the profession is, and always has been, overcrowded.

It is scarcely an exaggeration to say that it has

[1] They are: Chief Clerk to the Chancery Judges, Taxing Master in the Chancery Division, Clerk of the Peace, Undersheriff, Clerk to the Justices, Town or Vestry Clerk, Clerk to Boards of Guardians, and Coroner; but the last office is not confined to solicitors, nor, perhaps, need Town Clerkships be held by solicitors.

always been unpopular. A long-continued series of complaints against it may be traced. How far the strictures have been deserved is not easy to say. "The Laws against Witches," said Selden, "do not prove that there be any": the laws against attorneys' malpractices do not prove that malpractices were common. But where so many witnesses agree, it is difficult to suppose the charges wholly unfounded, and for a hundred and fifty years solicitors themselves have complained that a few dishonourable practitioners brought disrepute upon the whole profession. Whether the proportion of cases in which a solicitor betrays his trust is larger than in other professions, is extremely doubtful. It is certain that in no other profession do so many opportunities for dishonesty arise, in none is the publicity greater, or the penalty for a breach of duty so great. From 1888 to 1895 there were 772 complaints made against solicitors, and of these no less than 426 were dismissed as not calling for an answer, since not even a *primâ facie* case was made.[1] If this happened when charges were deliberately made for inquiry by a judicial tribunal, what would be the fate of the vague and general allegations made by irresponsible writers? The large proportion of absolutely unfounded charges gives force to the remarks made in defence of the profession by the creator of the firm of Quirk, Gammon and Snap:—

"There will probably never be wanting those who will join

[1] Trevor and Lake's "Solicitors Act, 1888."

in abusing and ridiculing attorneys and solicitors. Why? In almost every action at law, or suit in equity, or a proceeding which may or may not lead to one, each client conceives a natural dislike for his opponent's attorney or solicitor.

If the plaintiff *succeeds*, he hates the defendant's attorney for putting him (the said plaintiff) to so much expense, and causing him so much vexation and danger; and when he comes to settle with his own attorney there is not a little heart-burning in looking at his bill, however reasonable.

If the plaintiff *fails*, of course it is through the ignorance and unskilfulness of his attorney or solicitor, and he hates almost equally his own and his opponent's solicitor.

Precisely so is it with a successful or unsuccessful defendant.

In fact, an attorney or solicitor is almost always obliged to be acting adversely to some one, of whom he at once makes an enemy, for an attorney's weapons must necessarily be pointed almost invariably at our pockets.

He is necessarily also called into action where all the worst passions of our nature—our hatred and revenge and our self interest—are set in motion. Consider the mischief that might be constantly done on a grand scale in society, if the vast majority of attorneys and solicitors were not honourable and able men; conceive them for a moment disposed everywhere to stir up litigation by availing themselves of their perfect acquaintance with almost every man's circumstances—artfully kindling instead of stifling family dissensions and fomenting public strife; why, were they to do only a hundredth part of what it is thus in their power to do, our courts of justice would soon be doubled, together with the number of our judges, counsel and attorneys."

Judge Haliburton puts the same truth more concisely. "Every feller that goes yelpin home from a court-house smarting from the law swears he is hit by a lawyer." It is true that there is nothing that interests a man more than his law suits, but this is only while

they are pending; the zeal and fervour that precede trial quickly fade. "On est sage au retour des plaids," says the proverb, and the disappointed litigant must have some one on whom to put the blame. The solicitor is the whipping-boy of the law. All the failings of the legal system are visited on him; he at least, in Mr. Bagehot's phrase, can be scolded. Gratitude, according to the moralists, is the feeblest of emotions, and the services solicitors render affect the private affairs which men rarely desire to make public. Hence, perhaps, the rareness with which testimony has been publicly borne in their favour. But for at least a century, in protest against the general opinion, solicitors have regarded their profession with pride, have recognized the especial call upon them for absolute integrity, secrecy, and—since they have so often to advise peace when war would bring profit—disinterestedness; and on the whole it may be claimed that they have not been unworthy of their trust. "An honourable solicitor," said Lord Hannen, "is a family blessing."

That this view has not been more generally urged may be due to the lack of professional spirit—the absence of any *esprit de corps*. The etiquette of solicitors has been strong enough to repress advertisement; it has failed, perhaps fortunately, to prevent the higgling of the market, and to enforce a strict adherence to "scale" charges; and, on the whole, in spite of agreeable exceptions, it has also conspicuously failed to

establish in the profession the good-fellowship which is a pleasant characteristic of the bar, or the loyalty to one another which distinguishes medical men. The habit of constant opposition, and the strenuous advocacy of the client's cause, have produced results more profitable to the client than agreeable to the solicitor.

The unpopularity, deserved or undeserved, is undoubtedly declining. In 1839, Mr. Tooke, a solicitor who had taken a prominent part in the affairs of University College, was publicly abused at a committee meeting by an honourable and gallant gentleman on the ground of his profession, till even Lord Brougham, no lover of the class, felt bound to vindicate his honour. So late as 1854 the Chairman of Committees of the House of Commons publicly declared that "the two great evils of this country were taxes and attorneys." He was serious: such a speech made now would be thought merely the humorous effort of a man who had no humour. But the decrease of the odium is accompanied by a decrease of litigation, in part attributable, no doubt, as it is often attributed, to defects and delays in the procedure of the courts, but largely due to a change in the national character. John Bull is not the man he was. The stout and sturdy litigants of old times are dying out. The original John Bull was a man of unappeaseable fierceness in legal warfare. The love of litigation was once so prevalent, it was said, "qu'il se trouve des personnes qui non seulement y prennent quelque plaisir, mais du tout n'ont autre

plaisir en ce monde, tellement que vivre sans plaider ne leur serait que demie vie." These excellent clients delighted not only in substantial triumphs, but took as keen a pleasure in the technicalities and tricks of law. The technicalities are gone, and with them, it seems, the delight in law as a sport, the appreciation of advantages won not by merit but by the rules and rigour of the game. Perhaps when Othello's character is cleared, a large part of his occupation may be gone.

But hitherto, in spite of the constant opposition of the legislature and of popular dislike, the numbers and influence of the profession have continually grown. In somewhat similar manner the merchant and the broker have outlived the denunciations once general, and the apothecary, long the object of popular contempt, has become a fully qualified member of the medical profession. The merely personal privileges of the solicitor have, no doubt, practically disappeared. But the right of representation by solicitor has been constantly extended, until it seems alien to our ideas that in any circumstance a man should not be entitled to be so assisted. The duties and functions of the profession have constantly increased with an inevitableness almost suggesting the operation of a natural law, so that now a solicitor may be called upon to advise on any incident affecting the person, the property, or the reputation of men.

APPENDIX.

CHRONOLOGY.

DATE		PAGE
1874	37 & 38 Vict. c. 14. Admission of colonial practitioners of seven years standing; 37 & 38 Vict. c. 68; The Solicitors Act, 1874; The Associated Provincial, Wakefield and South Durham, and North Yorkshire Law Societies founded.	
1875	38 & 39 Vict. c. 79. The Legal Practitioners Act, 1875. Bradford, Nottingham, Sheffield District, and Stockport Law Societies founded.	
1876	39 & 40 Vict. c. 66. The Legal Practitioners Act, 1876.	
1877	40 & 41 Vict. c. 25. The Solicitors Act, 1877.	
	40 & 41 Vict. c. 62. The Legal Practitioners Act, 1877. Shropshire Law Society founded.	
1878	Swansea and Neath Law Society founded.	
1880	Lincoln Law Society founded.	
1881	44 & 45 Vict. c. 44. The Solicitors' Remuneration Act, 1881	198
1882	Bury, Huddersfield, Chester and North Wales, and Luton Law Societies founded.	
1884	47 & 48 Vict. c. 24. The Colonial Attorneys' Relief Act Amendment Act, 1884.	
1888.	51 & 52 Vict. c. 65. The Solicitors Act, 1888. The Incorporated Law Society to be the authority to inquire into allegations against solicitors.	230
1894	57 & 58 Vict. c. 9. The Solicitors Act, 1894. Power to exempt graduates in law from the Intermediate Examination.	
1895	58 & 59 Vict. c. 25. The Mortgagees' Legal Costs Act. Solicitor-mortgagees entitled to professional remuneration.	

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